LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. ~~606~~ 12

NORTHWESTERN STATES PORTLAND CEMENT COMPANY, APPELLANT,

vs.

STATE OF MINNESOTA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

FILED NOVEMBER 12, 1957
PROBABLE JURISDICTION NOTED JANUARY 6, 1958

INDEX

Page

Complaint 1

Answer 20

Transcript of testimony 24

Stipulation 186

Order settling case 187

Findings of fact, conclusions of law and order for judgment 188

Memorandum 199

Motion for amended findings of fact, conclusions of law and order for judgment 210

Order for amended findings of fact 214

Amended findings of facts, conclusions of law, order for judgment 217

Judgment 218

Notice of appeal 219

PLAINTIFF'S WITNESSES.

William G. Burkman:

Direct examination 25

Cross examination 36

Daniel J. Leahy:

Direct examination 173

Cross examination 179

DEFENDANT'S WITNESSES.

Gilbert Benton Pray:

Direct examination 44

Cross examination 101

Re-direct examination 117

Recalled.

Direct examination 184

William Ralph Wilkins:
Direct examination 121
Cross examination 134
Examination by the Court 154
Cross examination 155
Re-direct examination 158
Re-cross examination 160

Peter Andersen:
Direct examination 161
Cross examination 167
Examination by the Court 170
Re-direct examination 172

	Original	Print
Proceedings in the Supreme Court of the State of Minnesota	221	221
Opinion, Matson, J.	221	221
Dissenting opinion, Nelson, J.	244	242
Dissenting opinion, Gallagher, J.	276	273
Petition for reargument	280	276
Answer to petition for reargument	296c	288
Order denying petition for reargument	297	297
Judgment	298	297
Notice of appeal	299	298
Clerk's certificate (omitted in printing)	304	302
Motion and certificate of the Supreme Court of the State of Minnesota as to federal question	305	302
Order noting probable jurisdiction	309	304
Record from the District Court, Fourth Judicial District, County of Hennepin, State of Minnesota	310	305
Defendant's Exhibits:		
No. 1—Certificate from the Secretary of State of the State of Minnesota indicating that "Northwestern States Portland Cement Co" has not qualified to do business in the State of Minnesota	310	305
2—Certificate of Corporate charter issued by the Secretary of State of the State of Iowa extending the corporate life of appellant	311	306
3—Northwestern States Portland Cement Company's certificate of incorporation as Iowa corporation	312	307
4—Order form carried by salesman (Duplicate copy omitted in printing)	312a	308
5—Order form used in Minneapolis office	317	310
6—Blank form—Report of shipments made to customers—Daily loading record	319	312
7—Blank form—List of orders sent from Minneapolis office	320	313
8—Form letter of acknowledgment of receipt of order	321	314

Defendant's Exhibits—Continued	Original	Print
No. 11—Original invoice mailed to customer (Duplicate and office copy omitted in printing)	322a	316
Straight bill of lading—short form	325	317
12—Blank form—Acknowledgment of customer's order (Duplicate copies omitted in printing)	328	320
13—Blank form—Uniform straight bill of lading	337	322
14—Blank form for quoting prices to customer	343	326
15—Blank form for claim allowance (Duplicate copy omitted in printing)	345	328
16—Blank form for quotation to line yard customers (Duplicate copy omitted in printing)	347	329
17—Blank form for specific work quotation	349	331
18—Blank form for contract of purchases between Northwestern States Portland Cement Company and a customer who buys direct	351	333
19—Blank form for contract record for shipping purposes (Duplicate copy omitted in printing)	352	334
20—Blank form of contract of purchase between three people, the dealer, the contractor and Northwestern States Portland Cement Company	356	336
26—Blank form for advertising requisition	357	337
28—General letter to different sales personnel, dated December 18, 1950 giving quotations effective January 1, 1951	358	338

	Original	Print
Plaintiff's Exhibits:		
No. Q—Letter from G. Howard Spaeth to Northwestern States Portland Cement Company, dated February 8, 1950	359	339
R—Letter from G. Howard Spaeth to Northwestern States Portland Cement Company, dated October 21, 1949	360	340
S—Application for Motor Vehicle Registration, #961532, 1952	361	341
T—Application for Motor Vehicle Registration, #B938872, 1951	365	345
U—Application for Motor Vehicle Registration, #963878, 1952	371	351
V—Application for Motor Vehicle Registration, #B86067, 1949	375	355
W—Application for Motor Vehicle Registration, #B86066, 1949	381	361
X—Application for Motor Vehicle Registration, #B86065, 1949	386	366
Y—Application for Motor Vehicle Registration, #237696, 1949	391	371
Z—Application for Motor Vehicle Registration, #547515, 1952	397	377
AA—Application for Motor Vehicle Registration, #876358, 1952	401	381
BB—Application for Motor Vehicle Registration, #176160, 1949	405	385

State of Minnesota, 1
In Supreme Court.

STATE OF MINNESOTA, DISTRICT COURT,
County of Hennepin. 4th Judicial District.

STATE OF MINNESOTA,
Plaintiff, 2

vs.

NORTHWESTERN STATES PORTLAND CEMENT CO.,
Defendant.

COMPLAINT.

Plaintiff for its complaint against the above named defendant alleges:

I.

That the above named defendant failed to file 3 a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1933; that the Commissioner of Taxation on or about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income for said year; that the said defendant failed to file such return of income within

thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1933, for the defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $806.48; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $40.32 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $512.70 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a second cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30,

1934; that the Commissioner of Taxation on or about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1934, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $2530.92; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $126.55 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $1997.18 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a third cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1935; that the Commissioner of Taxation on or about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1935, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $1734.29; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $86.71 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $1296.05 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a fourth cause of action against defendant, plaintiff alleges: 1

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the Fiscal year ending November 30, 1936; that the Commissioner of Taxation on or about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after 2 such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1936, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $4240.29; that the Commissioner of Taxation 3 duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $212.01 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $2990.27 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax

1 together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a fifth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1937; that the Commissioner of Taxation on or
2 about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November
3 30, 1937, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $4875.78; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $243.79 and interest accrued at the rate of

four per cent per annum on said unpaid tax in the amount of $3234.24 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid. 1

For a sixth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1938; that the Commissioner of Taxation on or about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1938, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $4510.41; that the Commissioner of Taxation duly made demand for the payment of said tax; 2 3

that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $225.52 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $3241.12 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a seventh cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1939; that the Commissioner of Taxation on or about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1939, for the said defendant based upon information available to him and assessed a tax on

the basis thereof; that the tax determined upon the face of said return was in the amount of $6215.48; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $310.77 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $3600.17 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For an eighth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1940; that the Commissioner of Taxation on or about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section

44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1940, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $4992.95; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $249.65 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $2682.68 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a ninth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1941; that the Commissioner of Taxation on or about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days

after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1941, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $7543.57; that the Commissioner of Taxation duly made demand for the payment of said tax; that the said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $377.18 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $3734.07 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a tenth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1942; that the Commissioner of Taxation on or

about June 9, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1942, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $3277.92; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $163.90 and interest accrued at the rate of four per cent per anum on said unpaid tax in the amount of $1634.25 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For an eleventh cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1943; that the Commissioner of Taxation on or about October 21, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1943, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $10.14; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $.51 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $4.31 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the com-

mencement of this action, no part thereof has been paid.

For a twelfth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1944; that the Commissioner of Taxation on or about October 21, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1944, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $2496.32; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $124.80 and interest accrued at the rate of four per cent per annum on said unpaid tax in

the amount of $920.89 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a thirteenth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1945; that the Commissioner of Taxation on or about October 21, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1945, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $3462.01; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said re-

turn and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $173.10 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $1132.90 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a fourteenth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1946; that the Commissioner of Taxation on or about October 21, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1946, for the said defendant based upon information available to him and assessed a tax on

the basis thereof; that the tax determined upon 1
the face of said return was in the amount of $8035.85; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $401.79 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $2292.32 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax to- 2
gether with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a fifteenth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 3
1947; that the Commissioner of Taxation on or about October 21, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days after such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Sec-

tion 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1947, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $4114.51; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $205.73 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $1000.81 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

For a sixteenth cause of action against defendant, plaintiff alleges:

I.

That defendant heretofore failed to file a return of its income with the Commissioner of Taxation for the fiscal year ending November 30, 1948; that the Commissioner of Taxation on or about October 21, 1949, duly demanded of said defendant that it file a return of its income for said year; that the said defendant failed to file such return of income within thirty (30) days af-

ter such demand was duly made upon it; whereupon the Commissioner of Taxation on or about February 7, 1950, by the authority vested in him by Laws of Minnesota, 1933, Chapter 405, Section 44, as amended, made and filed a return of income for the said fiscal year ending November 30, 1948, for the said defendant based upon information available to him and assessed a tax on the basis thereof; that the tax determined upon the face of said return was in the amount of $8370.53; that the Commissioner of Taxation duly made demand for the payment of said tax; that said defendant by its failure to file said return and pay the tax thereon on the due date prescribed by law incurred a penalty in the amount of $418.53 and interest accrued at the rate of four per cent per annum on said unpaid tax in the amount of $1684.55 calculated to December 1, 1953; that although the Commissioner of Taxation has demanded payment of said tax together with penalty and interest thereon from the defendant before the commencement of this action, no part thereof has been paid.

Wherefore, the State of Minnesota demands judgment against defendant for the sum of $102,536.82, together with interest on the sum of $70,578.31 from December 1, 1953, together with its costs and disbursements herein.

STATE OF MINNESOTA,
J. A. A. BURNQUIST,
Attorney General,
JOSEPH S. ABDNOR,
Assistant Attorney General,
209 State Office Building,
St. Paul, Minnesota,
Attorneys for Plaintiff.

(Title of Cause.)

ANSWER.

Defendant, as and for its answer to plaintiff's complaint herein:

I.

Alleges that defendant above named is and was, on the date of attempted service of summons in the above-entitled action, a corporation organized and existing under and pursuant to the laws of the State of Iowa and was not and is not subject to service of process within the State of Minnesota.

II.

Alleges that on the date of said attempted service of process on defendant, defendant was not and never has been engaged in doing business within the State of Minnesota so as to sub-

ject defendant to the jurisdiction of the above Court; that the attempted service of process herein was and is invalid and wholly void as being contrary to the provisions of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. 1

For a second and further defense:

I.

Realleges paragraph I of defendant's first defense herein. 2

II.

Alleges that defendant has not been properly served with process in this action in accordance with the requirements of law and the applicable Minnesota Statutes providing for service of process on foreign corporations, and that the above Court has not acquired jurisdiction over the party of defendant herein.

For a third and further defense:

Alleges that plaintiff's complaint fails to state facts sufficient to constitute a cause or causes of action or a claim against this defendant upon which relief can be granted. 3

For a fourth and further defense:

I.

Realleges paragraph I of defendant's first defense herein.

1

II.

Alleges that the attempted imposition of the tax, penalties and interest referred to in plaintiff's complaint, and the applicable Minnesota Statutes under which said imposition is attempted, being Chapter 290, Minnesota Statutes 1949, and in particular 290.03 thereof, are invalid and void as being in conflict with and in violation of the Commerce Clause, Article I, Section 8, Clause 3, of the Constitution of the United States.

2

III.

Alleges that the attempted imposition of the tax, penalties and interest referred to in plaintiff's complaint, and the applicable Minnesota Statutes under which said imposition is attempted, being Chapter 290, Minnesota Statutes 1949, and in particular 290.03 thereof, are invalid and void as unjustly discriminating against this defendant in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

3

IV.

Alleges that the attempted imposition of the tax, penalties and interest referred to in plaintiff's complaint, and the applicable Minnesota Statutes under which said imposition is attempted, being Chapter 290, Minnesota Statutes 1949, and in particular 290.03 thereof, are invalid and void as depriving defendant of its property without due process of law, in violation of the Due Process Clause of the Fourteenth Amendment to the Con-

stitution of the United States, by imposing a tax on the income of defendant which arises from and is a result of business conducted without and beyond the State of Minnesota and the jurisdiction thereof. 1

Wherefore, defendant demands judgment:

1. That the return of service herein be quashed, or that this action be dismissed for lack of proper service of process, or

2. That plaintiff's action herein be dismissed for lack of jurisdiction of the Court over the party of defendant, or 2

3. That this action be dismissed as being in violation of the provisions of the Constitution of the United States, and

4. That defendant have judgment for its costs and disbursements herein.

JOSEPH A. MAUN,
425 Hamm Building,
St. Paul 2, Minnesota,
Attorney for Defendant. 3
MERLYN C. GREEN,
425 Hamm Building,
St. Paul 2, Minnesota,
Attorney for Defendant.
WILLIAM R. BUSCH,
425 Hamm Building,
St. Paul 2, Minnesota,
Attorney for Defendant.

1 Of Counsel:
BUNDLIE, KELLEY, FINLEY and MAUN,
425 Hamm Building,
St. Paul 2, Minnesota.
Of Counsel:
SMITH & BECK,
505 First National Bank Building,
Mason City, Iowa.

(Title of Cause.)

2 TRANSCRIPT OF TESTIMONY.

The above entitled cause, being on the General Term Calendar of the above named Court, came duly on for hearing before the Honorable Paul S. Carroll, one of the judges of the above named Court, without a jury, on November 8 and 9, 1954, Joseph S. Abdnor, Esq., Assistant Attorney General, and Arthur Roemer, Esq., Special Assistant Attorney General, appearing as attorneys for the plaintiff, and Bundlie, Kelley, Finley &
3 Maun by Joseph A. Maun, Esq., and Earl Smith, Esq., appearing as attorneys for defendant. The following proceedings were then and there had:

Mr. Maun: May it please the Court, I would like to move the admission of Mr. Earl Smith of Mason City, Iowa, an attorney from Iowa, as associate counsel for the purpose of this case.

The Court: We will recognize him here, yes.

WILLIAM G. BURKMAN, 1
called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Abdnor:

Q. You have stated your full name?

A. William G. Burkman.

Q. Where do you live?

A. St. Paul.

Q. What position do you hold with the State of Minnesota? 2

A. Director of the Income Tax Division of the Department of Taxation.

Q. How long have you held that position?

A. I have been Director of the Income Tax Division, of the present Department of Taxation, since July 1, 1939, and I held a similar position under the old Minnesota Tax Commission from on or about August 31, 1936, up to 1939.

Q. Were you with the Division prior to July 1, 1936? 3

A. Yes, sir.

Q. What position did you hold?

A. Corporation Tax Examiner.

Q. Will you state briefly your duties with respect to your administrative position as head of the Income Tax Division?

A. My duties include the general supervision and direction of all the activities of the Division, including the preparation of income tax forms, in

assisting in the preparation and promulgation of the regulations, interpreting provisions of the Income Tax law, the direction of the receipt of returns, the receipt of money, the audit of those returns, and the filing and processing of the same.

Q. Briefly then, all of the operations of the Income Tax Division are under your administration?

A. Yes, sir.

Q. Are the files and records of the Income Tax Division kept under your direction and control?

A. They are.

(Plaintiff's Exhibits A to P, inclusive, were marked for identification.)

Q. Mr. Burkman, I hand you a group of documents stapled together. The top sheet is identified as Plaintiff's Exhibit A, and I will ask you if you can identify that group of documents?

A. I can.

Q. Will you state what it is, sir?

A. They are copies of the corporation income tax returns of Northwestern States Portland Cement Company, an Iowa corporation, Mason City, Iowa.

Q. I refer you to the last page of this exhibit and ask you whose signature is at the bottom of that?

A. That is my signature.

Q. A copy of your signature?

A. A copy, yes, sir.

Q. That means that you signed that document, the original of it? 1

A. Yes, sir.

Q. Inasmuch as you have identified and signed this document, what does your signature indicate?

A. My signature indicates that this document was filed by the Income Tax Division for the taxpayer.

Mr. Abdnor: I offer in evidence Plaintiff's Exhibit A.

Mr. Maun: Mr. Abdnor, all of these exhibits are alike, except for different years. 2

Mr. Abdnor: Different figures and different contents.

Mr. Maun: I was wondering if you could show them all to us.

Mr. Abdnor: I was going to offer the others in a group.

Mr. Maun: I will save my objection until you offer them all.

By Mr. Abdnor:

Q. Mr. Burkman, I hand you now Plaintiff's Exhibits B through P and ask you if it is not a fact that they are documents for different years, but otherwise substantially the same as to information that you have given with respect to Exhibit A? Are they, so far as, except for detail of preparation and for years involved—I am trying to expedite this—are they prepared in the same manner as Exhibit A? 3

A. They were all prepared by the Division for the taxpayer, and they all relate to Northwestern States Portland Cement Company, and they are fiscal years from 1933 on up through 1947.

Q. Then these, like Exhibit A, are income tax returns with the name Northwestern States Portland Cement Company on the face of them, prepared by the Department and signed by you?

A. That is correct.

Q. The original of these documents is a part of the files and records of the Income Tax Division?

A. They are.

Q. You have the originals here in court, as a matter of fact, have you not?

A. Yes, sir.

Mr. Abdnor: Your Honor, I can expand on the identification of these documents.

Mr. Maun: I have no objection to foundation, no objection.

The Court: Received.

(Plaintiff's Exhibits Q and R were marked for identification.)

By Mr. Abdnor:

Q. Mr. Burkman, I hand you a document entitled Plaintiff's Exhibit Q, and I will ask you if you can identify that?

A. I can.

Q. Will you state what it is.

A. It is a copy of a letter sent to Northwestern States Portland Cement Company, Mason

City, Iowa, under date of February 8, 1950, informing them that we had written them at various times requesting that they either file State Corporation Income Tax Returns, and that we have not received such returns, and accordingly under our authority from Section 290.47 of the Income Tax Act "We have prepared returns for you from such information as we could obtain and have assessed a tax on the basis thereof for each year." It ends up by saying, "We are enclosing statements of account showing the amount of tax, penalty and interest assessed for each year. Kindly send remittance for the full amount shown on these statements within ten days from the date of this letter, or the accounts will be given to the Attorney General with instructions to bring immediate suit against you for the recovery of these liabilities."

Mr. Abdnor: Plaintiff's Exhibit Q is offered in evidence.

Mr. Maun: No objection.

The Court: Received.

By Mr. Abdnor:

Q. I hand you Plaintiff's Exhibit R. Can you identify that?

A. I can.

Q. State what it is.

A. It is a letter to Northwestern States Portland Cement Company, First National Bank Building, Mason City, Iowa, dated October 21, 1949, informing the corporation that "Section 33 of the Minnesota Income and Franchise Tax Act

requires every corporation to file a Minnesota State Income and Franchise Tax Return if its taxable income was in excess of $1000 or if its gross income was in excess of $5000. Therefore, even if net income was less than $1000, a return still must be filed if gross income was in excess of $5000. According to our records you have not filed Minnesota State Income and Franchise Tax Returns for the years shown above. Demand is hereby made upon you under Section 44 of the Act to file returns for the periods shown above within 30 days from the date of this letter and to pay the full amount of the tax shown to be due on each return together with the penalty and interest imposed by the Act." The letter concludes with the statement that "If you fail to file the returns or the affidavits within 30 days from the date of this demand, returns will be prepared for you for these periods by the Commissioner of Taxation from the best available information and an assessment of tax will be made on the basis thereof, together with the penalties provided by Section 49 of the Act."

Mr. Abdnor: Exhibit R is offered in evidence.

Mr. Maun: No objection.

The Court: Received.

By Mr. Abdnor:

Q. Mr. Burkman, Exhibit R is dated in October of 1949, and I will ask you if Exhibit A was prepared by the Department subsequent to the date of Exhibit R?

A. It was. 1

Q. Was the tax assessed on the amount shown on Exhibit A for the fiscal year ending November 30, 1948?

A. Yes, sir.

Q. I should correct an earlier statement. November 30, 1948, was the latest year.

The Court: Starting in 1933 and to 1948, inclusive?

Mr. Abdnor: That's right, your Honor.

Q. Was the tax assessed in the amount shown on the face of each of the other exhibits, B through P? 2

A. Yes, sir.

Q. Mr. Burkman, you have before you State's Exhibit A. First, I will ask you upon what basis that exhibit was prepared?

A. It was prepared on the basis of the best information that was available at the time it was prepared.

Q. Does the tax assessed by virtue of that exhibit, Mr. Burkman, purport to tax all of the net income of this defendant for the year stated thereon? 3

A. It does not.

Q. Does it purport to tax a part of the income of this defendant for the year stated?

A. Yes, sir.

Q. First, referring to Exhibit A, the third sheet is headed "State of Minnesota, Department of Taxation, Schedule M, Apportionment Data,"

Would you explain the manner in which that purports to tax a portion of the income of this defendant? Give us briefly the meaning of that apportionment sheet?

A. First, the entire net income of the corporation amounted to $852,897.74. That is the entire net income earned everywhere. To that entire net income has been applied a percentage. The percentage was obtained by taking the arithmetical average of three factors; namely, first, the percentage obtained by taking the dollar value of the property situated in Minnesota compared to the dollar value of the property everywhere. Obtaining that produced a percentage of .1142%. The second factor is payroll. That is obtained by dividing the dollar payroll payments in Minnesota compared to the payroll payments everywhere. That produced a percentage of 1.6484%. The third factor in this arithmetical average formula is sales. That is the ratio of the sales within Minnesota compared to the sales everywhere, and that produced a percentage of 48.4493%.

By the Court:

Q. You mean this corporation did 48.49% of its business in Minnesota?

A. No, that is the amount of sales that have been assigned to Minnesota on this return as compared to sales made by the corporation everywhere.

Q. That is the same as saying 48% of their business was done in Minnesota?

A. No, I think it is a little different than saying 48% of their business was done here. 1

Q. Sales?

A. Forty-eight per cent of sales have been assigned on this return as having been made within Minnesota.

Q. You mean to Minnesota people, or are you down to that yet?

By Mr. Abdnor:

Q. Perhaps I could clarify that for the Court by asking what you attempt to put into the sales factor of a multi-state business of this type? 2

A. The sales made within Minnesota through, from, or by offices, stores and agents, and so forth, compared to sales made everywhere, with certain exclusions.

Q. Will you name the exclusions for the Court.

A. Well, the law does exclude certain sales that are made by the taxpayer's agents or agencies outside the state, with some other technical provisions. I don't have the Act here before me.

The Court: Well, if you are satisfied you have made the record. 3

By Mr. Abdnor:

Q. I am not sure yet. You were at the point where you had three factors. Now, proceed.

A. To arrive at the arithmetical averages of these, we had .1142% as the tangible property factor; 1.6484% as the payroll percentage; and 48.4493% as the sales percentage, giving us a

total of 50.2119%. We divide that by three and obtain a percentage of 16.7373%, and that percentage is applied against the entire net income of the corporation, with certain minor exclusions, and the result obtained by applying that to the net income of the corporation is the income assigned to Minnesota on which the tax is computed.

Q. Now, making reference to the testimony, you referred to exclusions. Will you expand on the exclusions a bit with respect to sales made by offices or agencies outside of the State of Minnesota?

A. Well, the law does provide that sales made by a taxpayer outside the State, by agencies chiefly situated at, or connected with premises owned or leased by the taxpayer for the transaction of business, shall be considered as non-assignable to the State.

Q. That is, if those premises are located outside of the State of Minnesota?

A. Yes, sir.

Q. Now, in the preparation of Exhibit A, you said that you made that up on the basis of the best information available to you. Does that answer stand with respect specifically now, to this apportionment data you have just recited to the Court?

A. Yes, sir.

Q. The apportionment data is based on the best information available to you?

A. That's right.

Q. Did you attempt to arrive at the apportionment on the basis of sales inclusions and exclusions that you have just recited?

A. We attempted to arrive at the sales percentage from the best information that was available at the time these returns were prepared.

Q. Now, Mr. Burkman, you have examined each of the exhibits, B through P?

A. Yes, sir.

Q. Without dealing specifically with each of those exhibits, was the method of apportioning income in Minnesota substantially the same, the method, that is, with respect to all of these other years as it was with respect to the year in Exhibit A?

A. I believe the same method was used as to all of these years.

Q. Your answer with respect to Exhibit A was that the entire exhibit was made up on the basis of the best information available to you. You may have covered this before, but is that true with respect to the other exhibits, B through P?

A. That is correct.

Q. Mr. Burkman, has any part of the tax assessed by virtue of Exhibits A through P been paid?

A. No, sir.

Mr. Abdnor: That is all.

CROSS EXAMINATION.

By Mr. Maun:

Q. Mr. Burkman, you testified, I believe, that you promulgated the regulations issued under the State Tax Law?

A. Promulgated them?

Q. Yes.

A. I thought I said that I supervised the preparation and promulgation. I supervised that, but I probably should add that I am under the direction of the Commissioner of Taxation, and subject to his approval, my statement is correct.

Q. You make the recommendations to him?

A. Yes, sir.

Q. Now, the Exhibits which you have prepared, A through P as a demand by you for this company to pay in accordance with the tax returns, that is exactly on the same kind of tax return that a domestic corporation would file and pay a tax on, is that correct?

A. May I ask, are you referring now to the apportionment directly, or are you referring to the entire return itself?

Q. Let's take all the returns before the apportionment formula to begin with.

A. No, a foreign corporation might be in a little different situation than a domestic corporation. I mean, they can be.

Q. Explain.

A. Certain income might be classified as non-apportionable on a foreign corporation, whereas a Minnesota corporation, it might not be.

Q. Does that refer primarily to dividends, interest, and royalties? 1

A. That's right.

Q. Aside from that, is there any difference in the return you have asked these people to file from what there is that you ask a domestic corporation to file?

Mr. Abdnor: I wonder if there might not be some confusion with respect to terms. Do you mean the blank form?

The Witness: Oh, that is the same.

By Mr. Maun: 2

Q. Identically the same, is that right?

A. Yes, sir.

Q. Then insofar as the apportionment matter is concerned, isn't it true that identically the same apportionment factors are used in arriving at the amount of income of a domestic corporation allocated to the State of Minnesota, as you have used in allocating the income of this corporation to the State of Minnesota?

A. I believe that is correct.

Q. Did you make any investigation at the time you made the demand and preparation of these returns to determine whether the income of this corporation was produced exclusively from Interstate commerce? 3

A. I don't know that that question came up during the investigation.

Q. Did you come to any determination in your determination of what the fact was?

A. You mean as to whether they were engaged in interstate commerce?

Q. That's right. That is not exactly my question. The question is whether or not you determined as a fact if this income was or was not all produced from engaging in interstate commerce?

A. Well, so far as I know, I don't believe that was.

Q. I don't understand your answer. Will you state what your answer is.

A. I thought your question was as to whether the question of whether this taxpayer was engaged in interstate commerce was a consideration in making up these returns.

Q. Was it a consideration?

A. It was not, that I know of.

Q. You answer is, it was not taken into account at all?

A. That would be my answer.

Q. I take it from listening to your answers to Mr. Abdnor that the levy which you seek to collect from this company is really based upon its total net income, wherever earned, as allocated and attributed to Minnesota under the formula you have used? Is that right?

A. That is right, with certain minor exclusions.

Q. That is, non-apportionable income?

A. That's right.

Q. Then if this income is all derived from interstate commerce, then the factors here take

into account only income derived from interstate commerce, isn't that right? 1

Mr. Abdnor: I wonder if that is not hypothetical?

Mr. Maun: Yes, it is hypothetical.

Mr. Abdnor: That is objected to on the ground it is hypothetical.

The Court: Sustained.

Mr. Maun: I have no further questions.

By the Court:

Q. Just one thing. On this percentage of sales, again, 48.49%, you said you excluded certain things from that. A Minnesota citizen, if he had written down to this company and ordered cement, would that be excluded? If he had written down to Iowa and ordered cement, would you include that kind of a sale? 2

A. It depends on what the selling company did in Minnesota.

Q. Well, suppose they had offices in every town in Minnesota, but I still write down to Iowa and order some cement, and they send it up to me. I am just asking you what you consider in establishing this percentage. You said if there were such an agency outside the State that the company could sell—whatever they sold to Minnesota people you didn't consider, or did I understand you correctly? 3

A. It is possible, say, that a corporation had an office in Superior, Wisconsin, and they had no office, no employees, no property of any kind in

the State of Minnesota, and the Minnesota individual ordered some goods from this office in Wisconsin, and that would be not classified as a Minnesota sale.

Q. That is a good example. Take one more example. Suppose they had an agent in Duluth and one in Superior, but somebody in Duluth went to Superior and ordered it and it was sent over by one of their trucks.

A. That would depend on just how that sale originated, whether the Minnesota office originated it.

Q. That didn't have anything to do with it.

A. Well, I suppose the same answer.

Q. It is not what the law is. The question is, what did you do under the circumstances?

A. You mean this particular case?

Q. Yes, in establishing it.

A. The information that was available to determine as to whether that sale should be assigned to Minnesota under the law, that is fully available—

Q. I understand that.

A. It had to be made up from the best information that was available. Now, this may include—it is possible that the sales total includes all the deliveries of goods into Minnesota. I say, it is possible.

Q. You mean that is up to them to determine this and to come in and tell you where you are wrong?

A. I assume so. 1

Q. But as far as your trying to establish it, you wouldn't intentionally take into consideration sales in Minnesota brought about by crossing the State line over into Iowa?

A. We wouldn't have any information included in the dollar sales in the Minnesota factor that did not belong there as a matter of law.

Q. Well, that is just your conclusion as to what the law is. It doesn't quite answer my question.

A. Based on what facts we could get, we would have excluded these sales. 2

Q. If you had known, for example, that any sale in this group had occurred between a Minnesota citizen and a company in Iowa, you would not have included it?

A. Provided the Minnesota office had nothing whatsoever to do with that sale.

By Mr. Abdnor:

Q. In other words, Mr. Burkman, I understand that if sales are made in Minnesota through an agent or agency on premises owned or leased by the taxpayer outside of this State, you would not include those sales in the Minnesota apportionment factor? 3

A. That is correct.

By the Court:

Q. One other question. The first factor was percentage of property in the State of Minnesota?

A. Yes, sir.

1 Q. And you found that to be .1142%. That would be less than one per cent?

A. It happened to be only $3,816.12 compared to $3,340,640.95.

Q. What was it, office equipment?

A. It is listed in here as equipment, furniture and fixtures.

Q. Did they have a warehouse here in which they stored their stuff?

A. No, sir, not that I know of.

The Court: All right, thank you very much.

2 Mr. Abdnor: That is all.

Mr. Maun: No questions.

Mr. Abdnor: That, your Honor, is the prima facie case for the State, and the State rests.

(An opening statement was made by Mr. Maun.)

(Defendant's Exhibits 1, 2 and 3 were marked for identification.)

Mr. Maun: Defendant offers in evidence Defendant's Exhibit 1, a certified copy of a certificate from the Secretary of State of the State of

3 Minnesota.

Mr. Abdnor: No objection.

The Court: That they are not licensed?

Mr. Maun: They are not qualified or never have been, to do business in the State of Minnesota.

The Court: Received.

Mr. Maun: Defendant offers in evidence Defendant's Exhibit 2, which is a copy of the cer-

tificate of incorporation, the charter, the original corporate charter of the defendant. 1

The Court: That is in Iowa?

Mr. Maun: That is in Iowa, yes, your Honor, a photostatic copy.

Mr. Abdnor: No objection.

The Court: Received.

Mr. Maun: Defendant offers in evidence Defendant's Exhibit 3 which is a photostatic copy of the original certificate of charter issued by the Secretary of State of the State of Iowa extending the corporate life of this corporation. 2

Mr. Abdnor: No objection.

The Court: Received.

Mr. Maun: I believe, your Honor, it will be stipulated that the sales included in the sales factor in Plaintiff's Exhibits A through P do not include any sales that were not delivered within the State of Minnesota, or sales that were delivered outside of the State of Minnesota.

Mr. Abdnor: With respect to that, your Honor, I have no reluctance in agreeing with Mr. Maun, that this sales factor does not include sales resulting in deliveries to customers outside of the State of Minnesota, for whatever it may be worth. 3

The Court: When you are ready to stipulate something for the record, you do it.

Mr. Abdnor: That is it.

The Court: Read it into the record when you are ready to stipulate.

Mr. Abdnor: Very well, I believe it may be

1 stipulated that included in the sales factor on the assessments made by the State, there were no sales which resulted in deliveries of cement to customers outside of the State of Minnesota. Is that correct?

Mr. Maun: That's right.

The Court: All right. I just want you to have your stipulation exactly accurate.

GILBERT BENTON PRAY,

called as a witness on behalf of the defendant,

2 being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Maun:

Q. Mr. Pray, were you once employed by the Northwestern States Portland Cement Company?

A. Will you step up closer? I won't hear you that far away.

Q. Where do you live, Mr. Pray?

A. Mason City, Iowa.

3 Q. During the past 30 years, by whom have you been employed?

A. Northwestern States Portland Cement Company.

Q. When did your employment commence?

A. 1929, in January.

Q. During that period of time, what positions did you hold with that company?

A. Assistant Sales Manager, and Sales Manager.

Q. How long were you Assistant Sales Manager? 1

A. From 1932 until 1941.

Q. After 1941 what was your position?

A. I was Sales Manager.

Q. Until what time?

A. Until July 1, 1954.

Q. Now, as Assistant Sales Manager, what were your duties?

A. My duties were to follow the salesmen and see that they performed and operated in accord with our general policy of operation. 2

Q. What were your duties as Sales Manager?

A. Well, practically the same except I had full charge and jurisdiction of all sales.

Q. Who was Sales Manager when you were the Assistant Sales Manager?

A. J. B. Cabanis.

Q. Now, Mr. Pray, I am going to ask you a series of questions and they will all relate to the period between 1933 and 1948, in case I should forget to remind you of that fact, so keep that in mind that they relate to the period of 1933 to 1948. 3

A. Okay.

Q. During that period of time, did your company have an office in the State of Minnesota?

A. Yes, we maintained an office in Minnesota.

Q. Where was that office maintained?

A. In Minneapolis.

1 Q. In what building?

A. The Roanoke Building.

Q. Did you own any real estate in the State of Minnesota?

A. No, sir.

Q. Under what arrangement was that office building had by your company?

A. What arrangement?

Q. Did you lease it?

A. We leased it, yes.

Q. What employees did your company have
2 residing in the State of Minnesota during this period of time?

A. In the entire state?

Q. Yes.

A. We had five. Do you want their names?

Q. Yes.

A. R. S. Sig, Willmar; Mr. Youngstrom, Faribault; Joe E. Meyer, Minneapolis; W. R. Wilkins, Minneapolis; and Harold Yokum, Minneapolis.

Q. Did you have any others, any other place in the State of Minnesota than in Minneapolis?
3

A. No, sir.

Q. Did Mr. Sig have an office out of which he worked?

A. No, sir, he operated out of his home.

Q. What territory did he cover?

A. Well, we described that as the north and southwestern parts. It would be the southwestern part of the state.

Q. What territory did Mr. Youngstrom cover? 1

A. The southeast portion of the state, Winona and Rochester.

Q. And Mr. Meyer?

A. Points north of Minneapolis, St. Cloud, Little Falls, that territory, and Alexandria.

Q. How about Mr. Yokum?

A. Mr. Yokum operated strictly in the Twin Cities area.

Q. How about Mr. Wilkins?

A. Mr. Wilkins operated in the same area, 2 the Twin Cities area.

Q. Did you have any other employees in the State of Minnesota?

A. Not as salesmen. We had a lady in the office, Mrs. Humphrey.

Q. What were her duties?

A. Her duties were to be on the job when these boys were out selling, keep taking care of telephone calls that came in from our customers from sources in the territory as well as Minneapolis and St. Paul, and she was a stenographer 3 too, she wrote up the orders and sent them down to Mason City, or telephoned them.

Q. Prior to the time Mrs. Humphrey worked for your company in the Minneapolis office, did you have other girls holding a similar position?

A. Prior to the time we hired her?

Q. Yes.

A. I think we had a girl prior to that, yes.

1 Q. What were her duties?

A. The same as Mrs. Humphrey's.

Q. Who hired the salesmen that lived in Minnesota?

A. Well, I hired Mr. Youngstrom. I think Mr. McDonald hired Mr. Sig. Mr. Joe Meyer was hired by Mr. McDonald. That was prior to my time. I hired Wilkins and Yokum as well as Mrs. Humphrey.

Q. Who is Mr. McDonald?

A. Mr. McDonald was assistant to the presi-
2 dent, and general manager of our company.

Q. Where was he located?

A. In Mason City.

Q. During all your term of employment, where were you located?

A. Mason City, Iowa.

Q. Have you ever resided in the State of Minnesota?

A. No, sir.

Q. Has Mr. McDonald ever resided in the State of Minnesota?
3

A. Not to my knowledge.

Q. Who hired the girls that worked in the Minneapolis office?

A. I did.

Q. Had any of these girls at any time been hired by any salesman residing in the State of Minnesota?

A. No. Salesmen have no authority to hire anyone.

Q. Do the salesmen have any authority to fire any employees? 1

A. No, sir.

Q. Do the salesmen have any authority to allocate territories among one another?

A. No, sir.

Q. Who negotiated the lease on the office space where the company has its Minneapolis office?

A. That is handled—I am not competent—by the secretary of our company, Mr. Andersen.

Q. Where does he live? 2

A. Mason City.

Q. Who handles the purchase of office furniture and equipment in the Minneapolis office?

A. I generally handle that.

Q. What type of personal property does the company have in Minnesota?

A. Personal property?

Mr. Maun: Your Honor, I wonder if it can be stipulated that these questions relate only to these years, 1933 to 1948, so we won't have to waste the time to keep repeating that. 3

Mr. Abdnor: It may be so understood.

The Court: I thought that is the way it is, you told him that to start with, that it only covered that period.

By Mr. Maun:

Q. What type of personal property do you have in the State of Minnesota, Mr. Pray?

The Court: You say "do you have".

1 The Witness: As I understand the question, it is the furniture and office equipment in the Minneapolis office.

By Mr. Maun:

Q. I had reference to the years 1933 to 1948, during the years 1933 to 1948, what kind of personal property did you have in the State of Minnesota?

A. Well, I think the answer is none.

Q. Did you have any office furniture and fixtures?

2 A. Yes, we had office furniture and fixtures. Is that personal property?

Q. Did you have any other type of personal property in the state?

A. No, sir.

Q. What type of furniture and fixtures did you have in this Minneapolis office?

A. Well, it consists of three desks and a couple of filing cabinets and a typewriter.

Q. How large is the Minneapolis office?

A. The Minneapolis office consists of three 3 rooms, one reception room in which there are two desks located, and that room is probably ten or fifteen feet. The other office is a private consulting room, and it is about ten by ten, and the other room is strictly a storage room, about six by eight or six by ten.

Q. What did you keep in that storage room?

A. They keep their supplies in there and a few items of advertising material that we pass

out to customers from time to time, as the salesmen call on customers. 1

Q. Where did the Minneapolis office obtain supplies?

A. They requisitioned my office for supplies and we shipped them to them as they needed them.

Q. Did the employees of the Minneapolis office purchase any supplies directly?

A. No, sir.

Q. How about postage stamps?

A. They buy their own postage stamps, if I am correct on that. 2

Q. How about blotters, pencils, and so forth?

A. We furnish all of those things from our office.

Q. Do they have a telephone in this office?

A. Yes, sir.

Q. That appears in the telephone directory under what name?

A. Northwestern States Portland Cement Company.

Q. How is the telephone bill paid? 3

A. The telephone bill is paid from Mason City. The bill is rendered to our Minneapolis office and forwarded to us by our Minneapolis office and paid from our office directly to the telephone company.

Q. Does your company have a bank account in the State of Minnesota?

A. No, sir, not to my knowledge.

Q. Does your Minneapolis office have a petty cash fund?

A. No, sir.

Q. Where does the Minneapolis office obtain its stationery and envelopes?

A. That material is supplied from my office in Mason City. They requisition what they need from time to time.

Q. How are the salaries paid?

A. Our salaries are paid monthly. The checks are drawn in Mason City and forwarded direct to each employee.

Q. Who fixes the salaries that are to be paid employees living in the State of Minnesota?

A. I fix them.

By the Court:

Q. Are they all salaried people then, and not on commission?

By Mr. Maun:

Q. Are any of your Minnesota employees working on a commission basis?

A. No, sir.

Q. How is the rent paid for that office that you have in Minneapolis, Mr. Pray?

A. The rent is paid monthly by check from our office in Mason City.

Q. Who sets the vacation policies?

A. I do, as sales manager.

Q. Is that true as to all Minnesota employees?

A. Yes, sir.

Q. Was that true during the period of 1933 to 1948? 1

A. Yes, sir.

Q. Does the salesman have an automobile?

A. Yes, each salesman has a car, an automobile.

Q. Who owns that car?

A. All cars are owned by the company.

Q. Are the salesmen allowed an expense for operating these automobiles?

A. Yes.

Q. Who purchases new cars for the salesmen when they need one? 2

A. The cars are purchased from our office. There have been times when we have permitted a car to be purchased on the territory, but the quotations would have to be submitted for our approval.

Q. What do you mean by "our office"?

A. I mean my office.

Q. Where?

A. Mason City, Iowa.

(Defendant's Exhibits 4 and 5 were marked for identification.) 3

Q. Mr. Pray, I show you Defendant's Exhibit 4 and I will ask you if you can identify that. If you can do so, will you tell the Court what it is.

A. This form is taken from our order book that is carried by the territory salesman. He makes three copies. The original comes to our office. This copy stays in the book, and this copy

goes to the customer at the time the order is taken.

Q. Is that the type of order form used by your Minnesota salesmen?

A. It is a type that is used, yes, except—yes, it is exactly the same, they all carry the same book.

Mr. Maun: Defendant's Exhibit 4 is offered in evidence.

By Mr. Abdnor:

Q. Mr. Pray, during the time of your service with the company, or during the years to which reference is here made, has any other type of order book been used in Minnesota except this?

A. No, sir, that is the old original form.

Q. That is the only form used?

A. Yes, sir.

Mr. Abdnor: No objection.

By Mr. Maun:

Q. Mr. Pray, showing you Defendant's Exhibit 5, I will ask you to identify it, and if you can do so, tell the Court what it is.

A. This order form is identical with the ones that we used in our order book, except it has been prepared for use by our Minneapolis office in placing the orders with us at Mason City, and it is made this way so that it is carried in the typewriter at the time they make out the order and send it down. It was a form for a telephone order.

Q. Where is this form kept?

A. We send those order forms to the Minneapolis office together with other supplies, and it is kept in the Minneapolis office until they need more. 1

Q. Was this form used during the period 1933 to 1948?

A. Yes, sir.

Mr. Maun: Defendant's Exhibit 5 is offered in evidence.

By Mr. Abdnor:

Q. Mr. Pray, what is the difference between Exhibit 5 and Exhibit 4? 2

A. They are identical, I am pretty sure.

Q. They are the same?

A. Yes, word for word.

Q. Then what was the distinction you say?

A. We put them up in that form because we tear them off of the pad. This salesman form is in book form.

Q. And this is on a pad?

A. That is on a pad with no carbon copies attached. 3

Q. And that is the only difference?

A. That is the only difference.

Q. It is used in the Minneapolis office?

A. That is the only place we use that form.

Mr. Abdnor: No objection.

The Court: Received.

By Mr. Maun:

Q. Now, refer to Defendant's Exhibit 4, Mr. Pray, and will you tell us exactly how that form is used?

A. Well, the salesman, when he picks up the order, he naturally fills in the form, invoiced to such and such a lumber company, their address, Hampden, Iowa, or Minneapolis, Minnesota, the destination, and the date the order is to be shipped. The form provides for either standard Portland cement, plastolith Portland cement, high early strength cement, or Masons cement. The order sometimes consists of all four to be shipped in the same car. The number of barrels is indicated on the order. The order is generally signed and forwarded to Mason City for shipment.

Q. Who signs the order?

A. The customer signs, and the salesman signs it.

Q. Does the customer receive a copy of this form?

A. Yes, he has the yellow copy.

Q. What is done with the original?

A. The original order stays in our office and is filed.

Q. How does it get to your office?

A. It comes by mail.

Q. Will you explain just briefly, without going into detail, what is on the form, how Defendant's Exhibit 5 is used.

A. The order is received by the Minneapolis office and written up on this form for the commodities required, and signed by our Minneapolis office and mailed to Mason City.

Q. Do the salesmen working out of the Minneapolis office take that form with them?

A. No, the salesmen working out of the Minneapolis office use the book. 1

Q. Who in the Minneapolis office uses the form, Exhibit 5?

A. Mrs. Humphrey.

Q. Is that used when she receives telephone orders?

A. That's right.

Q. Does the customer receive a copy of Exhibit 5 when the order is taken?

A. No, sir.

(Defendant's Exhibit 6 was marked for identification.) 2

Q. Mr. Pray, I show you Defendant's Exhibit 6 and ask you if you can identify it. If you can do so, will you tell the Court what it is.

A. Yes, that is a form that we use in tabulating the names of the customers and the orders received at that day, and this tabulation, together with those orders, are mailed to our office daily.

Q. Who prepares this tabulation in Defendant's Exhibit 6? 3

A. Mrs. Humphrey.

Q. Who is this form directed to?

A. This form is directed to me at Mason City, Iowa.

(Defendant's Exhibit 7 was marked for identification.)

Q. Now, Mr. Pray, I show you Defendant's Exhibit 7 and ask you what that is.

1 A. I will have to reverse my identification of this paper. This form here, Exhibit 7, is the form that is made up by Mrs. Humphrey and sent by her, itemizing the orders received.

Q. Just take Exhibit 7 first. What items go on Exhibit 7?

A. Well, the order number and the number of barrels and the customer's name, and the destination and the time of shipment requested.

Q. Where is the information obtained that goes on to Exhibit 7?

2 A. That is obtained by our Minneapolis office when the order comes in.

Q. Does that include these telephone orders?

A. Yes, sir, all orders.

Mr. Maun: Defendant's Exhibit 7 is offered in evidence.

By Mr. Abdnor:

Q. Does Exhibit 7 include on it the orders written up by salesmen who work out of that Minneapolis office?

3 A. There is no salesman working out of the Minneapolis office except Mr. Wilkins and Mr. Yokum.

Q. Well, that is what I mean.

A. Yes, those orders are included.

Q. Does it include on it all those?

A. Yes, sir.

Mr. Abdnor: No objection.

The Court: Received. Is he going to identify 6 later on?

Mr. Maun: Yes, your Honor. 1

Q. Again showing you Defendant's Exhibit 6, will you say what that is, if you can?

A. Exhibit 6 is a form that we use where we list the names of the customers and the destination and number of barrels and so forth, of shipments made on these orders we were talking about on Exhibit 7. All those orders are listed here so that these people know whether or not they have been shipped.

Q. To whom is Exhibit 7, when it is filled out, sent? 2

A. Exhibit 7 is sent to me at Mason City.

Q. Pardon me, I mean Exhibit 6?

A. Exhibit 6?

Q. Who makes it up, and to whom is it sent?

A. It is made up by our chief clerk, Mr. Garlock.

Q. To whom is it sent?

A. To our Minneapolis office.

Q. What is the purpose of sending it?

A. Simply to keep those people informed as to what shipments are being made. 3

Mr. Maun: Defendant's Exhibit 6 is offered in evidence.

By Mr. Abdnor:

Q. Mr. Pray, at the top of Exhibit 6 there is typed "Daily loading record"?

A. That's right.

Q. Is this made up daily?

A. Yes, sir, that is a list of the orders that are shipped.

Q. Each day?

A. Yes, it is made up daily.

Q. It keeps your Minneapolis office informed of the shipments?

A. That is the reason for the report.

Mr. Abdnor: No objection.

By Mr. Maun:

Q. Why is this report made, Mr. Pray?

A. Why is it made?

Q. Yes.

A. It is made to keep our employees in Minneapolis informed as to shipments and orders accepted and shipped.

The Court: Ask him this question, ask him what the company does to notify the buyers that their orders are accepted.

Mr. Maun: I am going to cover that now.

(Defendant's Exhibit 8 was marked for identification.)

The Court: Exhibits 6 and 7 are both received.

By Mr. Maun:

Q. Mr. Pray, I show you Defendant's Exhibit 8 and ask you if you can identify that form, and if you can do so, will you tell us what it is?

A. This is a form that is used in acknowledging receipt of an order. The original of it goes to the buyer, or the customer. There are carbon copies to the salesman.

Q. Out of what office is this form sent?

A. This form is made up and mailed out of the Mason City office.

Q. Is that true in the instance of every order? 1

A. That's right.

Q. Who signs that form?

A. I sign it, as sales manager.

Mr. Maun: Defendant's Exhibit 8 is offered in evidence.

By Mr. Abdnor:

Q. Do you personally sign this?

A. When I am not there, my assistant would sign it, or my chief clerk has authority to sign it in the event I am out of the office.

Q. But if you are in the office you sign all of 2 them?

A. Yes.

Mr. Abdnor: No objection to Exhibit 8.

The Court: Received.

By Mr. Maun:

Q. Mr. Pray, will you tell us generally how orders come into the Mason City plant, if they come in in any other manner than through a salesman?

A. Yes, we receive orders by telephone, by 3 telegram, and by mail.

Q. What type of customers does your company have?

A. We sell our cement to dealers called lumber and building material dealers; those people dealing in building materials, and Ready-mix operators, large contractors such as road builders, block manufacturers, and pipe manufacturers.

Q. Do you sell directly to all types of contractors?

A. No, sir.

Q. From whom would a contractor normally purchase his cement if he wanted your brand of cement, what class of customer, if he wanted your type of cement?

A. I still don't understand it?

Q. To whom would a contractor go to purchase cement?

A. If he is going to build a culvert out here, he would go to some lumber dealer. He would ask that dealer if he handled our brand of cement.

Q. How is your cement shipped to the customer?

A. Our cement is shipped only by car, by rail.

Q. Is it all shipped by rail?

A. Yes, sir.

Q. Do you have any warehouse in the State of Minnesota?

A. No, sir.

By the Court:

Q. Don't you have any truck deliveries in the State of Minnesota?

A. We never load a truck. We have no facilities for loading a truck.

(Defendant's Exhibit 9 was marked for identification.)

By Mr. Maun:

Q. Mr. Pray, I show you Defendant's Exhibit 9 and ask you if you can identify it, and if you can do so, will you tell the Court what it is.

A. Exhibit 9 is what we describe as a loading order. It is a form on which the order is written up in our office when it is received. It is made out in triplicate. 1

Q. What is the purpose of Exhibit 9?

A. The purpose of Exhibit 9 is to enter the order and get it ready for shipment, after it has been properly okayed by the credit department and myself.

Q. What do you mean by that?

A. It has to receive an okay that the customer is financially sound and able to pay for the cement. You put an initial up here if that is true. 2

Q. Is that one of those forms filled out for each order you receive?

A. Yes, sir.

Q. In every instance, is the credit okayed?

A. The credit is always okayed by either the credit manager or his assistant.

Q. Who must that okay be by?

A. Mr. Andersen or Mr. Lehman.

Q. Where are they located?

A. Mason City, Iowa. 3

Q. Does the salesman have any authority to approve credit?

A. No, sir.

Mr. Maun: Defendant's Exhibit 9 is offered in evidence.

Mr. Abdnor: No objections to Exhibit 9.

The Court: Received.

By Mr. Maun:

Q. When an order comes into your place of business at Mason City, Iowa, I take it this is the first paper that is filled out in the office?

A. Just as soon as the necessary information is obtained from that order, the routing, the proper routing, it goes to the stenographer and this slip is made up in triplicate.

Q. What do you do with each of those triplicate copies?

A. As soon as the order is okayed by the credit department and myself, one copy goes out to the mill for shipment. The other goes up to our administrative department for invoicing as soon as we get the car number. This one stays in our file in the sales department.

Q. Then after the car has been loaded, what becomes of this duplicate copy?

A. All copies are returned to my office and are filed.

Q. Are any of these copies sent outside of the State of Iowa?

A. No, sir.

(Defendant's Exhibit 10 was marked for identification.)

Q. Mr. Pray, showing you Defendant's Exhibit 10, I will ask you if you can identify it, and if you can do so, will you tell the Court what it is.

A. This is an acknowledgment form covering various commodities that we not only manufacture but job. We manufacture our own cement,

all types of cement, but we also job white cement, cement plaster, lime and so forth. 1

Q. Is that form used in the regular course of your business?

A. Yes, sir.

Q. For what purpose is it used?

A. Simply to let the customer know that the order has been received and is being shipped.

Q. Is this the first acknowledgment the customer receives of the order?

A. That's right.

Q. Who signs this? 2

A. I sign it as sales manager.

Mr. Maun: Defendant's Exhibit 10 is offered in evidence.

Mr. Abdnor: No objection to Exhibit 10.

The Court: Received.

(Defendant's Exhibit 11 was marked for identification.)

By Mr. Maun:

Q. Mr. Pray, I show you Defendant's Exhibit 11 and ask you if you can identify it? If you can do so, will you tell the Court what it is? 3

A. This is the original invoice that is mailed to the customer out of our Mason City office, giving him the car number and the knowledge that the car has been shipped, and the list of merchandise included in the car.

Q. When is this invoice made out?

A. The invoice is made out the same day the car is shipped.

Q. What happens to the other copies of that invoice?

A. Well, the other copies—in case of it being a line yard, we would send a carbon copy to their local yard out in the country, and the salesman.

Q. What do you mean by a line yard?

A. An organization that has a string of 40 or 50 or 100 lumber yards throughout the country, and their general office, like J. L. Anderson Lumber Company, and of course, business is transmitted through their general office. The outlying yards need a copy of that in order that they may know that the item has been shipped.

Q. This document, Defendant's Exhibit 11, is in five copies, is that right?

A. Yes, I guess it is. I don't have particularly very much to do with this invoicing.

Q. Who handles the invoicing?

A. Mr. Andersen handles this. When we have sold the cement and shipped it, then my duties are practically finished. Mr. Andersen could probably give you more information in connection with these copies than I can.

Q. This is a form that is used in the regular course of business?

A. That is the original form that is used, but where those copies go I am not able to tell you exactly.

The Court: Well, it is 12:00 o'clock. Take a recess until 2:00 o'clock.

Mr. Maun: May I offer this in evidence?

By Mr. Abdnor: 1

Q. With respect to the terms printed on this invoice, have they varied during the years?

A. No, sir, the terms never varied.

Mr. Abdnor: No objection.

The Court: Received.

(November 8, 1954, 2:00 p.m.)

GILBERT BENTON PRAY,

recalled:

DIRECT EXAMINATION. 2

By Mr. Maun:

Q. Mr. Pray, when the cement order is filled at Mason City, where is the cement shipped normally?

A. Where is it shipped from?

Q. No, where is it shipped to?

A. The destination is referred to on the order.

Q. Is that directly to the dealer, or through a warehouse?

A. It goes directly to the dealer from our mill.

Q. I was not quite clear about how salaries 3 are handled insofar as the employees living in Minnesota are concerned.

A. Your question in that regard is simply this. In the hiring of the employees I set the salaries. The fact of the matter is, I have to submit my recommendations to the management, and I receive their okay, and then I refer the matter to the employee again.

Q. Who do you consider to be "the management"?

A. The man I report to was Mr. McDonald. He was assistant to the president, and general manager of our company at the time.

Q. In the case of fixing salaries, you make your recommendation to Mr. McDonald?

A. That's right.

(Defendant's Exhibit 12 was marked for identification.)

Q. Mr. Pray, I show you Defendant's Exhibit 12 and ask you if you can identify it, and if you can do so, will you tell the Court what it is.

A. Well, this is the form of acknowledgment to the customer.

Q. And is that a form regularly used in the normal course of business?

A. Yes.

Q. When is it used?

A. At the time the order is received. This is a form of acknowledgment that is used.

Q. Who fills out the form?

A. The chief clerk.

Q. Where is the chief clerk located?

A. He is located in my office.

Q. Is that at Mason City?

A. Yes, sir.

Q. After that form is filled out, what is done with it then?

A. This form is mailed to the customer direct from Mason City.

Q. This form appears to be a pad of several sheets. What is each sheet for? 1

A. Well, the copies go to the salesmen. If the order develops in the Twin Cities area, a copy of the acknowledgment goes to the Minneapolis office, and of course the original goes to the customer. We have these various copies so that in the case of a line yard operation, there would be two copies for them, one for the general office, and one for the line yard.

Q. Does the main office at Mason City retain a copy? 2

A. Oh, yes.

Mr. Maun: Defendant's Exhibit 12 is offered in evidence.

By Mr. Abdnor:

Q. Who signs these forms in Exhibit 12?

A. Either myself or my chief clerk or my assistant.

Q. Do you always do it when you are there?

A. Not always.

Q. Do you do it most of the time?

A. Most of the time when I am not too busy. It is my duty to do it, but my chief clerk has authority to sign my name. 3

Q. I understand you do it yourself most of the time?

A. Yes.

Q. Would you say that was 90 per cent of the time?

A. Some of the time, yes.

Q. I am trying to find out about how much of the time you sign them yourself?

A. Well, it is not half of the time.

Q. You don't sign half of these?

A. No, there is times when I sign those. They bring in a stack of them that high. I don't sign them all.

Q. But you have two separate forms of acknowledgments?

A. Yes, that form was developed after 1948. This form of acknowledgment here is a change in our form. This is the original form.

Mr. Maun: Well, if that is true I want to withdraw it.

The Witness: That is just to simplify the handling of orders to our office and not clutter up the files.

By Mr. Abdnor:

Q. Do I understand that this form was being used after 1948 instead of the form marked Exhibit 8?

A. That's right. We still use this form too.

Q. Simultaneously?

A. Up to 1948 we used this form.

Q. If the order comes in, do you send both forms?

A. No.

Q. Just one?

A. Just one.

Q. It is always this one, which is Exhibit 12?

A. That's right.

Mr. Abdnor: Instead of that form which used to be Exhibit 8. Well, with the understanding that it is used only after 1948, I have no objection to it. 1

The Court: Received.

(Defendant's Exhibit 13 was marked for identification.)

By Mr. Maun:

Q. Mr. Pray, showing you Defendant's Exhibit 13, I will ask you if you can identify it, and if you can do so, will you tell the Court what it is? 2

A. This is the regular bill of lading that describes the shipment, shows the shipping point and the destination, the commodity that is in the car, and it is made up at the time our invoice is made and goes with the invoice to the dealer from Mason City, Iowa.

Q. Who prepares the bill of lading?

A. Our traffic manager.

Q. Where?

A. In Mason City.

Q. This appears to be in triplicate. To whom do each of the copies go? 3

A. A copy goes to the invoice attached, a copy in our file, and we retain a copy in the department.

Q. Is this for shipment by rail?

A. By rail, that is the only way we ship.

Q. Is that true of all your products?

A. That's right.

Q. Do you ever ship by truck or any other way than by rail?

A. No, sir.

Mr. Maun: Defendant's Exhibit 13 is offered in evidence.

By Mr. Abdnor:

Q. Mr. Pray, is this the only form of bill of lading your company has used in the years here involved?

A. Yes, sir.

Q. You always used this one?

A. As far as I know.

Mr. Abdnor: No objection.

The Court: Received.

By Mr. Maun:

Q. Mr. Pray, who determines the railroad over which your products shall be shipped?

A. Our traffic man, Mr. Wallace, that is his business.

Q. How many railroads are there out of Mason City?

A. I think there is five trunk lines out of Mason City.

(Defendant's Exhibits 14 to 27 inclusive, were marked for identification.)

Q. Mr. Pray, showing you Defendant's Exhibit 14, I will ask you if you can identify that, and if you can, will you tell us what it is?

A. That is a regular form we used in quoting a customer on cement and other products we manufacture.

Q. You say you used that form in quoting the customer on cement. In what instances do you so quote a customer? 1

A. We quote at any time there is a change in the market price, or upon request.

Q. To what customers do you send that exhibit?

A. We send it to the lumber dealer, the building supply dealer, and the Ready-mix operator.

Q. Out of what office is that form sent?

A. These forms are always made up in the office of the Northwestern States Portland Cement Company in Mason City. 2

Q. Do the salesmen carry that form?

A. No, sir.

Q. Was this form used prior to 1948?

A. Yes, sir.

Mr. Maun: Defendant's Exhibit 14 is offered in evidence.

By Mr. Abdnor:

Q. Do I understand you to say that your sales men could not offer a quotation on price? 3

A. That's right. If the salesman wants a quotation he contacts my office, and picks one up from me and gives that to his customer.

Q. He never gives the customer a price?

A. Sure, he can figure out the price himself without a quotation.

Q. Then he can set a price?

A. Yes, he carries a rate book for that purpose. The price of cement is determined by the freight rate plus the package plus the cement.

Q. You didn't mean to imply that the salesmen could not tell the customer how much the cement would cost?

A. Oh no, he is familiar with that. He knows what the price is in every town he works.

Q. And he can tell the customer how much it is?

A. Sure, he has authority to do that.

Q. Under what circumstances is this used?

A. That is a quotation the customer has in his files so if he wants to refer to it he can.

Mr. Abdnor: No objection.

The Court: Received.

By Mr. Maun:

Q. In what instances would the customer use this quotation?

A. For his record of the price of cement f.o. b. cars in his town.

By Mr. Abdnor:

Q. Why do you want him to have a record?

A. It is our regular practice that he should be acquainted with the price. He has to sell it, and he has to know what his cost is.

By Mr. Maun:

Q. Can he not get the cost from the salesman?

A. He could get it from the salesman if he wants to ask the salesman for it. The salesman can figure it out for him, but the customer always has these quotations in his file.

Q. Do you send him a new quotation every time there is a change in price?

A. Yes. 1

Q. You send every dealer a new quotation?

A. That's right, or on request. If one dealer comes in and wants a quotation, we send it to him.

Q. You said the salesman carries a rate book. What do you mean by that?

A. He has a rate of the tariffs that are published on the freight rate on cement in 100 pounds from Mason City to the destination. He has those listed in his territory, and we make him up what we call a rate book, and that gives him the rate 2 on cement per 100 pounds, and from that he can work out the price.

Q. Is that a freight rate?

A. A freight rate per 100 pounds.

Q. That is from Mason City to the dealer's home town?

A. That's right.

Q. And to that what does the dealer add?

A. He has to add the cost of the package and the f.o.b. cars, Mason City price.

Q. Is the cost of the package the same to 3 all dealers?

A. It varies a little once in a while. It has been the same for many years.

Q. Except for freight?

A. Yes.

Mr. Maun: I do not know whether the Court ruled on Exhibit 14.

Mr. Abdnor: There is no objection to it.

The Court: Received.

By Mr. Maun:

Q. I notice on Exhibit 14 you have two columns. Will you explain what they are?

A. We quoted both ways, f.o.b. cars, Mason City, and we also quoted to the destination price, just for the convenience of the customer, so he will know what the price is, otherwise he would have to go down to the depot and find out what the freight rate is, and add it to the Mason City price which is here, in order to determine what the price is f.o.b. cars, his point. That is simply a matter of convenience to the customer.

Q. Showing you Defendant's Exhibit 15, Mr. Pray, will you look at it and identify it if you can, and tell the Court what it is.

A. Well, this is a form that we use in making up a claim order credit in the event that some cement has been damaged in transit. For instance, if 40 or 50 bags were destroyed in the car on account of rough handling by the carrier, we make out this form and state the conditions exactly on the amount allowed.

Q. Who makes that out?

A. I make it out.

Q. How do you obtain the information?

A. We have a letter from the customer making a complaint as to the loss he had in a particular place.

Q. Does the form have a place for approval?

A. I approve the form and send it to the accounting department and send it to the customer.

Q. Where is that handled? 1

A. That is handled in my office in Mason City.

Q. Is it ever handled in the Minneapolis office?

A. No, they have no authority to make any adjustments of any kind. That is all handled in my department.

Mr. Maun: Exhibit 15 is offered in evidence.

Mr. Abdnor: No objection.

The Court: Received.

By Mr. Maun: 2

Q. After this adjustment has been approved, how is the credit handled?

A. If the account has been paid we send the customer a check, and if not, we give him credit on his account.

Q. When you make a check refund, does it go directly to the customer?

A. That's right, the check is made payable to the customer.

Q. Is it mailed to him?

A. It is mailed to him. 3

Q. How do you obtain information, Mr. Pray, relative to the fact that there has been a damage to a shipmnt to a customer?

A. That information comes to us 90 per cent of the time from the customer, the person who receives the shipment. He generally makes a complaint right away by letter or by telephone.

Q. You say 90 per cent of the time, and the

1 other 10 per cent of the time how is it handled?

A. A salesman might come along and he would tell the salesman about it and the salesman would write my office and tell me about it, but that just happens when the salesman comes along.

Q. Do the salesmen carry any of those forms marked Exhibit 15?

A. No, he has no authority to make any adjustment whatsoever. He just simply relays the information in letter form.

Q. Showing you Defendant's Exhibit 16, can
2 you identify that? If you can, will you tell the Court what it is.

A. This is the form of quotation that we use when we quote on line yards, where there is a whole string of yards, a line organization has 25 points, and we send this to the general office of the line yard, and they want to know what the price is at the various points on the products that we manufacture. This is practically the same as the other quotation, only the points are listed on one sheet for convenience of the customer.

3 Q. Is that the situation where the customer has more than one shipping destination?

A. That's right.

Q. Out of what office is this form sent?

A. That form is made up in my office in Mason City, Iowa.

Q. Are any of these forms made up in the State of Minnesota?

A. Oh no, no.

Mr. Maun: Defendant's Exhibit 16 is offered in evidence. 1

By Mr. Abdnor:

Q. Do you sign these yourself?

A. Yes, sir.

Q. All of them?

A. What do you have reference to?

Q. Exhibit 16, which has just been offered?

A. No, I don't sign them all. The quotations are generally run through our printing press, but sometimes I just sign them. Whenever we make a specific quotation we sign them personally. 2

Q. Then you don't sign these as a matter of practice?

A. No, that's right.

Mr. Abdnor: No objections.

The Court: Received.

By Mr. Maun:

Q. Now, Mr. Pray, showing you Defendant's Exhibit 17, I will ask you to identify it, if you can do so, and tell the Court what it is.

A. This is a quotation on specific work, on work that can be identified, like a barn, or a bank building, or a library or a bridge. It is initially used in quoting for the account of a dealer. 3

Q. What do you mean by that?

A. I mean by that, that the cement is going to go through a dealer, and the dealer informs us as to what price he wants to sell that cement for, and that is the price we quote to the contractor who is figuring this work.

Q. Who is this sent to?

A. That form would be sent to a contractor.

Q. Would the form be sent to someone who is not a customer of yours?

A. Well, no.

Q. Who would the contractor be a customer of?

A. Well, the contractor can buy cement any way he wants to. If he asks for a quotation, we give it to him.

Q. In other words, I take it you would give a quotation to the contractor whether you sold directly to him or not?

A. Oh yes. We don't broadcast these quotations though.

The Court: Is he saying that he gives the quotation of what the contractor can go to the yard and buy it for?

Mr. Maun: He gives the quotation to the contractor.

The Witness: The contractor gets the quotation as authorized by the dealer, and when he gets the job, he buys the cement from that dealer unless he has a better proposition from some other dealer.

By the Court:

Q. You write a letter and tell him what he can go out to George Fullerton's yard and buy the cement for?

A. That is, we send him this quotation. That is on specific work.

The Court: Thank you very much. 1

By Mr. Maun:

Q. Now, Mr. Pray, will you give a concrete and specific example of when that form is used.

A. Call it concrete. You are going to build some culverts out here in the country, say over here by Anoka, adjacent to Anoka, and we have a good dealer here in Anoka, and he wants us to quote certain contractors who are familiar with this work on cement for delivery through his warehouse in Anoka. He gives us a list of contractors who he knows are figuring the work, and we figure this out here, so much per barrel, f.o.b. cars, and so much per barrel f.o.b. dealer's warehouse, and we send this to the contractor—the list of contractors that he has provided, and we quote them. Now, when the job is let, our salesman follows up that contractor as a matter of missionary work to get the order for the dealer, so that we, in turn, can sell the dealer the cement. 2

Q. Your salesmen endeavor to sell the contractors that go to a particular dealer? 3

A. That's right.

Q. Out of what office is this form sent?

A. If the contractor would go to some dealers we are not doing business with, he would buy some other brand of cement.

Q. Where is that form made?

A. That is made up in my office, and no one else handles it.

Mr. Maun: Exhibit 17 is offered in evidence.

By Mr. Abdnor:

Q. Has this form ever come into use because of the missionary the salesman has done?

A. Yes.

Q. It is a fact, is it not, that the salesman's missionary work has created the use of this form?

A. That's right.

Mr. Abdnor: No objection.

The Court: Received.

By Mr. Maun:

Q. Mr. Pray, I show you Defendant's Exhibit 18 and ask you to identify it if you can do so, and tell the Court what it is.

A. This is a contract form that we use in making a contract between ourselves and a customer who buys cement on a direct basis.

Q. What do you mean by a customer who buys cement on a direct basis?

A. On certain work, such as road construction located out in the country, we sell the contractors cement on a direct basis at the same price we sell the dealer. That is a matter of policy with our company.

Q. Where is this contract made up?

A. This contract is always made up in my office.

Q. Who signs the contract on behalf of the company?

A. I sign the contract personally, each one of them, and the buyer signs over here. There is no one authorized to sign that contract except myself, and it carries an original signature in each case.

Q. Your own personal signature?

A. Absolutely. 1

Mr. Maun: Defendant's Exhibit 18 is offered in evidence.

By Mr. Abdnor:

Q. Mr. Pray, these purchasers of the type you have described, contractors, are contacted by your salesmen?

A. Oh, yes, the salesmen call on contractors the same as they do dealers.

Q. If they know the contractor has a highway job they know he will need cement?

A. Yes. 2

Q. Do they carry with them one of these things signed by you?

A. No, absolutely not. The salesman never has these contracts in his portfolio, signed or unsigned. The salesman's job is to sell the cement, and he sends the order in on our regular order form.

Q. But after that comes in you make up this form?

A. We make up that form in my office and send it to the contractor direct for signature. 3

Q. You never send it to the salesmen to take it to the contractor?

A. No. I have gone out myself and closed a deal after a job has been sold, and I have been on the job myself.

Q. Would you sell to a contractor without this?

A. Sure. He doesn't have to make a contract.

That is for his own protection. It is no protection to us.

Mr. Abdnor: No objection.

The Court: Received.

By Mr. Maun:

Q. Showing you Defendant's Exhibit 17, Mr. Pray, do the salesmen in Minnesota carry any copies of that form?

A. Oh no.

Q. Mr. Pray, I show you Defendant's Exhibit 19 and ask you to identify it if you can do so, and tell the Court what it is.

A. When we get a contract, say for ten miles of paving, and it is going to take 40,000 or 50,000 barrels of cement, we make up what we call a contract record for our shipping record. That is a record of it. On this copy is a place over in here for tabulating the shipments that are made.

By Mr. Abdnor:

Q. Will you repeat that, sir, I didn't understand.

A. This is a record of the shipments that are made against a specific contract. This carries the date, the load order number, the date loaded, the number of barrels in each car of cement. The total amount of the contract is listed on the card, and we ship against that until we have completed the contract, and then we go to that form. This is simply an office record kept for our own convenience to know what we are doing.

By Mr. Maun: 1

Q. When you said "that form" you meant Defendant's Exhibit 18?

A. That's right.

Q. Where is this record, Defendant's Exhibit 19, kept?

A. This is kept in my office and the office of the chief clerk, who handles the detail work in connection with this record.

Q. Is that in Mason City?

A. That is in Mason City.

Q. Is any record kept anywhere in the State 2 of Minnesota?

A. No, sir.

Mr. Maun: Defendant's Exhibit 19 is offered in evidence.

Mr. Abdnor: If the Court please, I have made no objection to many exhibits because I don't want to impede this thing at all, but frankly I object to this on the ground it is immaterial. I think it simply complicates the record.

The Court: Well, it is part of their regular way 3 of doing business, a record kept of the amount of goods shipped to the individual.

Mr. Maun: That's right, your Honor.

The Court: Well, I think I will receive it. It may clog up the record a little, I don't know.

By Mr. Maun:

Q. Mr. Pray, I show you Defendant's Exhibit 20 and ask you if you can identify it, and if you can do so, will you tell the Court what it is.

A. Let me see that exhibit. This contract form is practically the same—Exhibit 20 is practically the same as Exhibit No. 18, except that it is a contract between three people, the dealer, the contractor, and the Northwestern States Portland Cement Company. It is a contract made covering the specific amount of cement for specific work. It is signed by the dealer, who is the seller, and the contractor, who is the buyer. A copy is mailed, after the signatures are secured, the copies of the contract are mailed to the dealer and the contractor and we retain one copy in our file.

Q. Who signs it on behalf of the Northwestern States Portland Cement Company?

A. I sign all those contracts personally.

Q. Are any of these forms kept in the State of Minnesota?

A. No, sir.

Mr. Maun: Defendant's Exhibit 20 is offered.

By Mr. Abdnor:

Q. On your last statement you said that none of these contracts, or copies of this form, are kept in Minnesota?

A. Yes.

Q. Of course, one of them might be sent direct to a purchaser in Minnesota?

A. I don't think so.

Q. If a dealer was in Minnesota, then it would be kept in Minnesota?

A. If the dealer was in Minnesota he would have a copy of it, of course.

Q. Yes, I wanted to clear that up. You said this was similar to Exhibit 18? 1

A. The terms and conditions are the same.

Q. Is it used about the same way?

A. Yes. The only difference is that the price is different, of course, in that it is a dealer price instead of the manufacturer's price.

Q. Who do you look to for payment under a contract of this kind?

A. We sell it to the dealer. The contractor pays the dealer.

Q. This type of thing again arises by virtue of the salesman calling on the dealer, this sort of thing like the contract marked Exhibit 18 arises by virtue of the salesman's work with the dealer and the contractor? 2

A. That's right.

Mr. Abdnor: No objection.

The Court: Received.

By Mr. Maun:

Q. Now, Mr. Pray, showing you Defendant's Exhibit 21, I will ask you if you can identify it and tell the Court what it is. 3

A. Exhibit 21 is a report identified as the salesman's daily town report. This report is made out by the salesman at the end of each day, and details the names of people he called on, whether they are dealers, contractors, Ready-mix operators or block manufacturers, whoever they are. They are listed on this form, and on the back he gives us a little resume of his conversation with

these people. He fills in these forms in connection with the location of the warehouse or railroad, and other information details that we require.

Q. Is this a form which each salesman in Minnesota makes daily to the company in Mason City?

A. All salesmen in Minnesota, as well as the other states, are required to make that report and mail it to my office.

Q. Do any of your Minnesota salesmen make a report to the Minneapolis office?

A. No, these reports all come to Mason City.

Mr. Maun: Exhibit 21 is offered in evidence.

Mr. Abdnor: No objection to Exhibit 21.

The Court: Received.

By Mr. Maun:

Q. Showing you Defendant's Exhibit 22, Mr. Pray, can you identify that and tell the Court what it is.

A. Exhibit 22 is a form that we use for the daily reports of Mr. Yokum in our Minneapolis office. It gives us a resume here of the people he calls on each day, so we know what he is doing and the people he is contacting. This report is mailed to my office daily. We get them one day for the previous day's work.

Q. Does Mr. Wilkins make a report of that kind?

A. Yes, Mr. Wilkins makes a report on a different form.

Q. Does Mr. Wilkins make a report such as Exhibit 21?

A. He is not required to make a report on this. 1

Q. Who does make a report on Exhibit 21?

A. This report is made by what we call territory salesmen, the men who travel the road. This report is strictly a Minneapolis office detail.

Q. You are referring to Exhibit 22?

A. Exhibit 22, that's right.

Mr. Maun: Exhibit 22 is offered in evidence.

By Mr. Abdnor:

Q. Do any salesmen in your entire system other than Wilkins and Yokum use this form? 2

A. What was your question?

Q. Do any men in your entire system use this form except these two Minneapolis men you named?

A. That is all.

Q. Just those two in your entire system?

A. That's right.

Mr. Abdnor: No objection.

By Mr. Maun:

Q. In what states does your company ship its cement? To what states does your company ship its cement? 3

A. We ship in Iowa, Minnesota, North Dakota, South Dakota, a small part of Nebraska, and the northeastern part of Wisconsin.

Mr. Maun: Exhibit 22 is offered.

Mr. Abdnor: There is no objection.

The Court: Received.

By Mr. Maun:

Q. Showing you Exhibit 23, Mr. Pray, can you tell us what that is?

A. Exhibit 23 is what we call the initial yearly town report. Only one is made out each year at the time the salesman makes his first call on the dealer. It is a detailed report, giving us the names of all dealers, cement operators, block manufacturers, anybody else that buys cement, whether we sell them or not. It is a record of who there is in this specific town that is in the cement business.

Q. What employees of yours make up that report?

A. All salesmen, all territory salesmen, including Mr. Wilkins of our Minneapolis office. He has to make this report out for every dealer in the Twin Cities area.

Q. Does a copy of this go to the Minneapolis office?

A. No, the original is made up and mailed into my office, the same as the territory men mail theirs to my office.

Q. Where are the originals retained?

A. In what we describe as our town file.

Q. Is that in Mason City, Iowa?

A. That's right.

Mr. Maun: Exhibit 23 is offered in evidence.

By Mr. Abdnor:

Q. What use do you make of these after you have them?

A. That is a source of information we have in

the event we get a telephone call from a certain point up here in the woods, and we are not familiar with the situation, we grab the file and turn it up here and we say "Well, this fellow is a trucker, he is not in the cement business and he is not entitled to buy from us." We know right off the bat. It is a matter of specific information for my guidance, so I won't get my wires crossed in transacting our business. 1

Q. Do you ever use this to see who might be buying cement in the town and who is not?

A. Oh, sure, prospective customers. 2

Q. Is this one way to keep your salesmen alert?

A. Sure, we have certain towns where we don't sell any cement. We have to make out this report just the same.

Q. That would include prospective customers?

A. Yes.

Q. The salesmen keep trying, and this is his job?

A. Sure. 3

Mr. Maun: Exhibit 23 is offered.

Mr. Abdnor: There is no objection.

The Court: Received.

Q. Who is supposed to make this out, Mr. Pray?

A. The salesman on the territory, as well as the Minneapolis office.

Q. How is this different from any other?

A. It is different from the other because this form provides for a list of all people in the town that are in the cement business. If there are five lumber dealers, maybe we only sell one, but this report covers them all. That is a source of information for my office, as a sort of guide.

By Mr. Maun:

Q. Showing you Defendant's Exhibit 24, Mr. Pray, can you identify it, and if you can do so, will you tell the Court what it is.

A. Exhibit 24 is what we call a weekly route sheet, or itinerary. Generally, the salesmen make up a tentative report of where he expects to be during the next week, and he sends that in on Saturday so we have it on Monday morning and we will know where he is going to travel during the week. He is supposed to make these towns and set down each one here, and in the event he doesn't, he is supposed to notify the office.

Q. If he doesn't make those towns, what office does he report to?

A. To my office.

Q. What salesmen make that report?

A. All the territory salesmen, outside salesmen, the people that travel the territory.

Q. Do Minneapolis salesmen make that report?

A. No, they don't. They are right in the Twin Cities and we can put our finger on them by telephone in an hour or so. We may want to get hold of this salesman and we know where he is going to be on Tuesday—well, here it is.

Mr. Maun: Exhibit 24 is offered in evidence. 1

By Mr. Abdnor:

Q. Do I understand you to say you don't use this in the Twin Cities because you are able to locate your salesmen here?

A. Yes, they are not outside the Twin Cities, they just work in Minneapolis and St. Paul.

Q. You can locate them by telephone?

A. If we want to get them on the telephone we naturally call the girl in the Minneapolis office, and if he happens to be out she will know where he is. 2

Mr. Abdnor: No objection.

The Court: Received.

The Witness: We don't use that form in the Minneapolis office. It would be just a duplication of effort.

By Mr. Maun:

Q. Showing you Defendant's Exhibit 25, Mr. Pray, will you identify that, and if you can do so, will you tell us what it is.

A. This is a daily report of towns visited, and has reference specifically to your Exhibit 24 in that it lists the towns that the salesman calls on today and comes in daily, so we know that he has made those towns. He states down below here where he expects to be tomorrow and the day after tomorrow, and a place provided here for any change in his mail address. We require this form so that in the event he changes his mind and is not going to make the town listed on the original 3

1 itinerary, then we know he is going to go to so-and-so. We may make a note that he will be back on the route next day.

Q. What salesmen make up Exhibit 25?

A. There is only three of them that make this up, Mr. Youngstrom, Mr. Sig, and Mr. Meyer.

Q. Do the salesmen working the Twin Cities territory use this form?

A. No, sir.

Mr. Maun: Exhibit 25 is offered in evidence.

Mr. Abdnor: No objection.

2 The Court: Received.

By Mr. Maun:

Q. Are the territory salesmen required to report on forms 23, 24 and 25 as part of their duties?

A. Oh, yes, that is absolutely—they all have specific instructions. This is the one thing that they must do, and it must be correct and specific in every case.

Q. Where do the salesmen obtain these forms?

3 A. Those forms come to my office, they are mailed to the salesmen when he is ready to start out, or he picks them up when he is in for the annual sales meeting, and if he runs out later he requisitions our office for an additional supply. When I say "our office" I mean my office.

Q. Does the Minneapolis office carry any of these?

A. They don't carry any of that kind whatever.

Q. To whom do the territory salesmen in Minnesota report? 1

A. They all report to my office at Mason City.

Q. Do any of them report to anyone in Minneapolis?

A. No, sir, they don't.

Q. To whom do the Minneapolis salesmen report?

A. The Minneapolis salesmen report to me at Mason City.

Q. Showing you Defendant's Exhibit 26, Mr. Pray, I will ask you if you can identify it. 2

A. This Exhibit 26 is simply a requisition form that is sent to us by our salesmen when they want to provide certain pieces of advertising material and have them shipped direct to our dealer or our customer. Sometimes the customer may be a contractor. It lists all the items of material that we have here, including pamphlets of all kinds, blotters, pencils, time books, which we furnish gratis, and that is made out by the salesmen in all territories, including the Minneapolis office, and mailed to my office. 3.

Q. Both the Minneapolis salesmen and the territory men use the same form?

A. Just exactly the same.

Q. Does the territory man send it to you or to the Minneapolis office?

A. They send it to me, the Minneapolis office has none of those supplies on hand for reshipment.

Mr. Maun: Exhibit 26 is offered in evidence.

By Mr. Abdnor:

Q. Just to clear up a point you mentioned, I think you said these things were gratis.

A. Yes, sir, we give the letterheads, envelopes, everything on there. There is no charge for that.

Q. In other words, if a contractor wants 1000 letterheads with his name on them?

A. You bet, we have a little printing press down there in our office.

Q. Do you put your name on the letterheads too?

A. No, sir, we don't mention our name or our product.

Q. What does "Number 3 house" mean?

A. That is just a picture of a house on there that goes to a dealer. These letterheads are made up by an artist. It will have farm buildings or a bridge or a piece of paving or something like that.

Q. And you furnish those to dealers and buyers without charge?

A. Yes, we can show you exhibits on that if you want to see. We send them 1000 letterheads and 1000 envelopes.

Q. You give them enough to transact all their business?

A. That is a part of our service to our customers. When they run out they can re-order.

Mr. Abdnor: No objection.

The Court: Received.

By Mr. Maun:

Q. Are all these supplies shipped out of the Mason City office?

A. Yes, we maintain a stock in Mason City, and the shipment originates there direct to the customer.

Q. Who is Mr. Wilkins?

A. Mr. Wilkins is our representative in Minneapolis and St. Paul.

Q. What are his duties?

A. His duties are to call on the customers in Minneapolis, particularly the headquarter offices of the line yard we have been talking about, but he also calls on the regular dealers in the Twin Cities such as Minneapolis Builders Supply, and St. Paul Builders Supply, and those kind of people.

Q. Is it necessary for an order to come through your salesmen in order for you to accept it?

A. No, it doesn't have to come through a salesmen. Any dealer can call us direct. Is that what you meant?

Q. Yes.

A. Yes, any dealer can call us direct and order cement.

Q. About how many times a year do your territory salesmen call on your dealers?

A. They aim to call about every three weeks, starting in March, and they wind up about the

first of November. During the winter months we don't travel.

Q. In case an order comes in from a new customer, how is that handled?

A. A new customer?

Q. Yes.

A. When we receive an order from a new customer, the first thing we do is check his credit with our credit department. We check to see if he is what we describe as a qualified dealer. He has got to qualify as a dealer. He has to be in the lumber business, wholesale building materials, or handling of building materials, or he cannot qualify. In other words, a truck driver cannot buy cement if he sent in an order.

Q. Would you refuse to sell to a truck driver if he sent in an order?

A. Yes, sir.

Q. How do you determine the date upon which a load of cement can be sent to a particular customer?

A. The date?

Q. Yes.

A. When we receive the order?

Q. No, how do you determine when the shipment is going to be made?

A. Well, when the dealer sends in an order, or the salesman, he generally specifies the date that he wants it shipped. As a rule we are able to meet that request and ship the car on the date requested. If we happen to be three or four

days behind on shipments, we notify the dealer immediately and inform him that we are three or four days behind on shipments on account of a breakdown, or a demand that is beyond the supply, and when we will ship. 1

Q. In what office is the date of shipment determined?

A. In our office in Mason City.

Q. Do any of your salesmen traveling in Minnesota determine the date of shipment?

A. Oh no, no. All they do is follow the instructions of the dealer and try to get it for him when he wants it. 2

Q. What are the duties of Mr. Yokum?

A. Mr. Yokum is simply a salesman in the Twin Cities area. He calls on a different class of people than Mr. Wilkins does. He calls on block manufacturers and contractors, and some dealers, but he does not make these line yard calls.

Q. What are the duties of Mr. Meyer?

A. He is a territory salesman. 3

Q. Out of what city does he work?

A. He lives in Minneapolis and he travels north. His territory will start, say at Anoka and Elk River, and further north. He goes up as far as Alexandria and St. Cloud and Little Falls.

The Court: Take a five minute recess.

(Recess.)

By Mr. Maun:

Q. Mr. Pray, showing you Defendant's Ex-

hibit 22, who is it you said makes out that report?

A. The men that travel the Twin Cities territory, Mr. Wilkins and Mr. Yokum.

Q. Why is it their report is different than the others in the territory?

A. The other reports that we maintain, the other reports on our town file down there is a matter of record, and these reports are just a matter of reporting to me to know how these boys are working and who they are calling upon.

Q. Do the men working out of the Minneapolis office call on dealers other than St. Paul and Minneapolis?

A. No, they don't, just the Twin Cities area.

Q. Calling your attention to Exhibit 12, that is the one you said was used after 1948?

A. That's right.

Q. As to all other forms to which you have testified, were they used from 1933 to 1948?

A. That's right.

Q. All except this one?

A. Yes, this being used at the present time.

Q. Who is in charge of the Minneapolis office?

A. I am directly in charge of the Minneapolis office.

Mr. Maun: No further questions.

CROSS EXAMINATION.

By Mr. Abdnor:

Q. Mr. Pray, I take it from what you said that the cement business is a competitive business?

A. Absolutely.

Q. And that it is competitive in the sense that there are other people selling cement in Minnesota besides your company?

A. I found that out, yes.

Q. Who are your principal competitors?

A. Universal Atlas, Dewey, Penndixie, Hawkeye, Lehigh. Those are the principal ones, and Huron if you want another one.

Q. Throughout your testimony we have heard a bit about freight rates.

A. Yes, sir.

Q. I understand that freight rates play a large part in the competitive picture concerning cement?

A. That's right.

Q. Is that because of the inherent weight connected with cement?

A. Yes.

Q. Do you have a representative in the Duluth area?

A. No, sir.

Q. Why not?

A. Because we don't ship cement up in the Duluth area. Universal Atlas is up there. We cannot ship up there because it would be prohibitive.

Q. Because of the freight rate?

A. Yes.

Q. You cannot compete in the Duluth area with a cement manufacturer up there?

A. That's right, any more than they could compete down in Austin, Minnesota.

Q. You have traveled, I take it, from Mason City to the Twin Cities on a good many occasions?

A. Yes.

Q. You know approximately how far it is from Mason City to the Minnesota line?

A. Yes, about 45 miles, I would say 40 miles.

Q. Would that mean then, that the southern Minnesota territory, from what you have just said, is a natural territory for the company you represent?

A. That's right.

Q. Because of the proximity to the cement plant?

A. Rates are favorable.

Q. I take it that you are pretty familiar with how other companies are situated with respect to their location and trade areas?

A. Yes.

Q. It is a fact, is it not, that there is no competition any closer to the Twin Cities than your plant?

A. There are two plants in Mason City. Lehigh has a plant there too.

Q. With respect to the Twin Cities, I under-

stand that this is a favorable trade area right here because you are as near, you and Lehigh, as any other plant? 1

A. We have the most favorable rate, yes.

Q. And that is an advantage in selling?

A. Yes.

Q. As a result, you make a very substantial number of sales in Minnesota?

A. We do.

Q. Now, these salesmen that you have here, you have told us that they call on the trade and they call upon the trade regularly? 2

A. Yes, they do.

Q. They also call on the retail purchasers to encourage those purchasers to buy from companies who sell your product?

A. Well, in the event of specific jobs. We don't contact house owners or anything like that. If they want to build a school house, we naturally go to the owners and the architect and contractors who we feel might be able to get the job, and those are the people we contact.

Q. What do your salesmen have in your favor when it comes to selling your concrete or cement as against other people's? 3

A. We have a very high grade product which we are very proud of, and we have one advantage over our competitors which is kind of hard for them to swallow, in that our cement makes a real light colored concrete. That is a selling point in our business. That is about all we have to offer.

We cannot make any stronger concrete than our competitors, although we will go up against any of them from the standpoint of quality.

Q. Do your salesmen urge these points when they are talking to lumber yards, dealers, and contractors?

A. Sure.

Q. Their job is to sell your cement as against others?

A. That's right.

Q. I would like to make a bit of inquiry with respect to the exhibit that listed certain advertising material. You said in your testimony that there was a room in the Minneapolis office, which, among other things, contained advertising material. Does that room hold advertising favors and that sort of thing that are used by your salesmen for Minneapolis?

A. The Minneapolis office requisitions us for what they need in the way of advertising material, but that, you understand, does not include letterheads or envelopes, but it includes blotters, lead pencils and pads, similar to this, that we put out with our name on it. Three or four items that we send up to them at regular intervals, maybe twice a month we send them a supply. They have that in their store room. When Mr. Wilkins and Mr. Yokum go out to call on the trade they will take along a bundle of those and they will take along a bundle of pads and three or four pencils and lay them on the desk as a token of good will.

Q. Those items have your name on them to be a reminder to the cement customer that your company has been good enough to furnish them with those items? 1

A. Yes, that's right.

Q. I notice there were pamphlets put out by your company with respect to various types of cement uses?

A. We don't produce the pamphlets. Our pamphlets are produced by the Portland Cement Association and we purchase the pamphlets from the Portland Cement Association and we pass them out to anybody that asks for them. We don't send them out in quantities, because they are expensive. 2

Q. Do your salesmen have those?

A. All they carry is a portfolio with a sample of what we have to offer, and if a man wants a pamphlet on concrete around the farm, we will send him half a dozen of those if he wants them, but we wouldn't send him two or three hundred.

Q. Because of the cost? 3

A. Yes, sir.

Q. I notice in the returns that were presented here this morning, State's Exhibits A through P, that there was allowed as a deduction from gross income on those returns, a certain advertising expense, part of which was designated as calendar expense. Does your company put out calendars?

A. No, we only put out one calendar as our annual calendar.

Q. That is what I mean?

A. Yes, we print a calendar and send one out to each dealer, each contractor and architect all over the country.

Q. In your trade territory?

A. Yes.

Q. And that includes Minnesota?

A. Yes, we don't send a customer two or three hundred, we send one that he can hang on the wall.

Q. Which has your name on it?

A. That's right.

Q. And the purpose of that is to create good will for your company and encourage the use of your product?

A. That's right.

Q. Are any of those sent to your salesmen for distribution?

A. They carry a few of them in the car. We generally send the salesman 25 of those calendars, and he goes out here where they are building a school house and the contractor has a temporary office, and he generally hangs one up in there, or for some reason the dealer's calendar has been destroyed, and he would be able to replace it. We distribute those by mail from Mason City. Those are all mailed out of Mason City at one time, along about the 15th or 20th of December. We have a job down there mailing out the calendars. There is about 7000 of them each year.

Q. I understand you pay the expenses of your salesmen up here?

A. Yes, sir. 1

Q. You pay their room when they are away from home?

A. Yes, sir.

Q. And their meals?

A. Yes, sir.

Q. And their car expense?

A. That's right.

Q. All of that is paid on vouchers submitted by your salesmen?

A. They submit an itemized statement of their expenses for the week. We get it in the Monday morning mail. I have to okay those expenses and they go up to the administrative department and the check is mailed direct to the salesmen. 2

Q. He is reimbursed for all such expenses?

A. He is.

Q. Do these salesmen incur any expenses in entertaining any prospective customers?

A. Entertaining, but it is not excessive.

Q. That is an accepted practice, is it not?

A. That is a small item of their expense.

Q. But they are reimbursed for whatever entertaining they do? 3

A. Yes, anything that is legitimate.

Q. Do they make any gifts at Christmas time and at birthdays?

A. No, they send out a Christmas card at Christmas time to their good friends and customers.

Q. Do you pay for that card from Mason City?

1 A. Yes, sir.

Q. Is that printed with the salesman's name?

A. Strictly a personal matter between the salesman and the customers.

Q. But he is reimbursed for that cost?

A. Yes, sir.

Q. Now, with respect to roads, streets, and highways, I take it that that is one of the major users of concrete products, the state and the municipalities with their streets and highways?

A. Well, you mean they buy cement direct?

2 Q. No, they use cement, do they not?

A. Oh, sure.

Q. There is quite a substantial amount of cement used for highways and streets?

A. Oh, yes.

Q. With respect to highway building in the State of Minnesota since 1939, you do not sell directly to the state, do you?

A. No.

Q. You sell to contractors?

A. Yes.

3 Q. How are contracts made with contractors to encourage them to buy cement from your company?

A. Well, the only thing we have to offer is our produet, and possibly a friendly relationship with the contractor.

Q. Built up through good will?

A. That is all. We have lots of friends around among these contractors, and we don't sell them all, all the time but we get our percentage.

Q. That is the job of your salesmen? 1

A. That's right, they build up good will with that fellow. Many a time we have been told "You are not in the picture this time, but the next time we get a job we will give you consideration."

Q. He is a pretty important man?

A. Yes, he is.

Q. Do you do some good will entertaining?

A. We do very little entertaining. We don't have to do that.

Q. A salesman or agent is able to sell without too much of that sort of thing? 2

A. Well, the contractors don't expect it. That used to be a matter of necessity in years gone by, that you had to go out and play ball.

Q. How many years ago was that?

A. Oh, 25 or 30 years ago.

Q. Would it have been true since 1933 in Minnesota?

A. Very little.

Q. I notice that you have an order form which has been put in evidence—I am sure you are familiar with it—that has a space for the signature of the customer. 3

A. Yes.

Q. Would you ship cement if he didn't sign that form?

A. Yes, sir.

Q. That is not required that he sign that?

A. No, sir.

Q. So if your salesman forwards an order, it

1 is not necessary to have the customer's signature on it?

A. No. We have salesmen who make it their particular business to get that signature. Other salesmen haven't got what it takes.

Q. You prefer to have that signature?

A. Sure, that completes the transaction, but it is not necessary. We do not require it.

Q. I think you testified with respect to this Exhibit 8, which is an acknowledgment of an order, that you send your customer a copy and one
2 to your salesman?

A. Yes, sir.

Q. Why?

A. So that he will know that the order has been received and is being shipped.

Q. Of what use is that information to him?

A. He keeps the record of his shipments so he knows what he is doing. It is the only source of information he has.

Q. Is it important that he know that it is shipped?

3 A. Oh, sure. He records that in his book. He has his record, he has a little book. He knows what he is shipping all the time.

Q. Of what use is that to him?

A. That he is a successful salesman.

Q. Well, he sent the order down to you?

A. He has got to know whether we ship it or not. It isn't worth a damn unless we ship it—oh, pardon me, unless we ship it and we get the money for it.

Q. So his responsibility doesn't end when he mails you the order? 1

A. Absolutely not.

Q. His responsibility goes beyond mailing you that piece of paper?

A. Sure.

Q. I think you said that a list of orders taken was sent in to your company? Is that right? Wasn't there one such exhibit?

A. A list of orders. Well, yes, all the orders that come to our Minneapolis office are listed on a sheet and sent down to us with a confirmation 2 of the order on the regular order form.

Q. I think you said that the lady in the office made out that sheet?

A. That's right.

Q. So in order to make up that sheet, she knows what orders have been taken by your salesmen?

A. Oh, no, she doesn't know what the salesmen are doing, just those in the Minneapolis office.

Q. I mean, Mr. Yokum and Mr. Wilkins. 3

A. That's right.

Q. They submit these—well, what do they give her to enable her to make up that listing?

A. They might give her just a memorandum like this, "Ship a car of bulk tomorrow." She makes up the order and tabulates it.

Q. That is a daily listing sheet?

A. Sure.

1 Q. How about the orders they have taken on the order form?

A. That just eliminates the necessity for her to make a copy of it, but she lists it just the same.

Q. Do they give her a copy?

A. Sure.

Q. Do they report in to this office every day for that purpose?

A. Oh, yes, they are in there and out of there all the time.

Q. Who occupies the desks?

2 A. Mr. Wilkins and Mr. Yokum and Mrs. Humphrey.

Q. Does Mr. Wilkins have a telephone by his desk?

A. Yes.

Q. That is available to talk to customers or call in?

A. Yes, sir, over one line. It is just an extension, you understand. There is just one line into our office with an extension to these other desks.

3 Q. Are you sure about that one line?

A. Yes, sir.

Q. There is only one line into your office?

A. I beg your pardon. I am corrected. My girl in the office says there are two lines. I am mistaken.

Q. That is something you didn't know about?

A. That's right, I just assumed there was one line in there, but I am corrected. I can tell you

how many lines we have in Mason City, but I don't know about up here. 1

Q. You would expect Wilkins to know that?

A. Yes, he can answer that question.

Q. That is part of his job?

A. Yes, sure. He would know how to answer that question.

Q. Mr. Pray, I hand you Exhibit 15, which has been described, I believe, as a claim for credit in the event of damage in transit?

A. Yes.

Q. I think you answered this to the effect that about 90 per cent of the time that comes direct to you from the customer? 2

A. That's right.

Q. And the rest of the time the salesmen forward it to you?

A. Well, the salesman might run into it, and when he does, of course, he would report it by letter, that so-and-so had 25 bags of cement broken in the last car and wants to know what you are going to do about it.

Q. I think that in response to inquiries, you said that your territory salesmen, whom I take to mean salesmen outside of the Twin Cities, call on their customers about once every three weeks? 3

A. That's right, it will average out about that way.

Q. Is the same situation true with respect to the Twin Cities men?

A. No.

1 Q. How often do they call on their customers?

A. They call on them much more often, because the turnover is much faster, there is more going on, more jobs in the making, and it is necessary to see those fellows more often. In the Twin Cities they buy 50 cars of cement when this fellow outside in some small town will buy one car a month. You have to keep after them all the time.

Q. Do they call on them more often than once every three weeks?

2 A. Oh, yes, they turn it over as fast as they can make it.

Q. I think you said you were with the company since 1929?

A. That's right.

Q. They have had this office in Minneapolis ever since that time?

A. Yes.

Q. They had it some time before that?

A. Yes, they had offices there when I came.

Q. In 1929?

3 A. Yes, sir.

Q. But you wouldn't know how far behind that?

A. I don't know. Quite a while. You can get that information from some of the other boys that are older than I am.

Q. Handing you Exhibit 11, Mr. Pray, did I understand that you say that has been used without change during the years we have involved here?

A. To my knowledge this is the same form we have always used. 1

Q. What do these words "Price f.o.b. destination" mean?

A. That means that is the price f.o.b. cars at point of delivery. It includes the freight and the package.

Q. And that is the way you sell?

A. That is the way we invoice it. We prepay the freight.

Q. You prepay the freight but send it f.o.b. the point of delivery? 2

A. That's right.

Q. I said point of delivery, I meant f.o.b. destination.

A. That's right.

Q. Mr. Pray, I notice again from State's Exhibits A through P, being these income tax returns that were made up by Mr. Burkman in his office, that there was a deduction allowed there for contributions made to the Minneapolis Community Chest. Are you familiar with those contributions? 3

A. No, sir, I know nothing about it.

Q. You don't know whether or not such contributions were made?

A. No, sir, I didn't have charge of that department, I don't know anything about it.

Q. Do you know whether or not there is a sign on the door of the office in Minneapolis?

A. Yes, I think our name is printed on the door.

Q. It is also a fact, or do you know, that the name is listed on the lobby directory in that building?

A. Well, I don't know, but I presume it is. I am pretty sure it is. That would be natural.

Q. With respect to the men that you described earlier as being salesmen of your company who live here in Minneapolis, do you know how long they have lived here? For example, Mr. Wilkins?

A. Sure, Joe Meyer has lived in Minneapolis, I would say, better than 30 years.

Q. So far as you know he has been a resident?

A. Yes.

Q. How about Mr. Wilkins?

A. Mr. Wilkins was born here in Minneapolis and he has lived here for many years. He had a job at one time with an outfit that made plaster down at Ft. Dodge prior to the time he went to work for us. I am not familiar with his activities prior to the time he went to work for us, except that he told me about his job prior to the time he made application to me for a job. Then he moved back to Minneapolis.

Q. Some years ago he moved back to Minneapolis for your company?

A. Oh, yes, ten or twelve years ago.

Q. How about Mr. Sig?

A. Sig has lived in Willmar, Minnesota, for a good many years, probably 30 or 35 years.

Q. How about the other man?

A. Mr. Youngstrom has lived in Faribault, Minnesota, for about 15 years. Prior to that time we had him in Iowa. Mr. Yokum has lived here all his life. 1

Q. So far as you know, the lady who works in the office is a resident of Minnesota too?

A. She is at the present time. I don't know how far back. All I know is when she went to work she lived in Minneapolis.

Mr. Abdnor: Thank you, Mr. Pray, I think that is all.

2

RE-DIRECT EXAMINATION.

By Mr. Maun:

Q. Does your company keep any inventories in the State of Minnesota?

A. No.

Q. Did they at any time between the year 1933 and 1948?

A. No.

Q. Now, with reference to Exhibit 15, which was the adjustment form, or complaint, do you remember that form? 3

A. Yes, sir.

Q. Do your salesmen in Minnesota carry a copy of that form or any supply of them?

A. No, sir, those forms are strictly handled in my office and made up in my office and completed and signed by nobody else but me.

Q. When a salesman sends information as to a customer's complaint, how does he send it in?

4

A. He just sends it on his regular correspondence paper, he writes a letter to that effect, informing us of the trouble that he ran into and wanting to know what we are going to do about it, and please advise the customer, which we do. We clear those matters up quick, very promptly.

Q. When an order is placed on your regular order form, which is Defendant's Exhibit 4—

A. Yes.

Q. You made the statement that that completes the transaction. What did you mean by that statement?

A. That is the complete transaction as far as the order is concerned.

Q. What do you mean?

A. That order comes in to us, and of course it is not completed until we have accepted it. That order has to be accepted two ways, by our credit department and by myself.

Q. Is this the accepted order, or after the customer executes or signs—what is Defendant's Exhibit 4?

A. I didn't get that question.

Q. Is the order accepted or approved before or after the customer signs it?

A. After.

Q. After the customer signs this order form?

A. That order is approved when it reaches our office.

Q. Are these orders ever approved in advance of the customer giving an order?

A. No. 1

Q. Now, Mr. Pray, I didn't quite understand your statement relative to prepaid freight in answer to Mr. Abdnor's question. Showing you Defendant's Exhibit 14, what exactly happens in this instance?

A. This is a quotation for bulk cement, in paper, or f.o.b. cars, Mason City, and f.o.b. destination.

Q. Why is that column, f.o.b. destination, included on that form?

A. Well, the dealer wants to know what the 2 price of the cement is at his destination.

Q. What is the price you quote to him?

A. We quote the destination price.

Q. What does that include?

A. That includes the Mason City price plus the package plus the freight.

Q. Why do you quote the destination price?

A. Because that is the price that he pays for the cement. He pays for the cement and the freight and the package.

Q. Do you have, Mr. Pray, in your company, 3 what is known as a base price?

A. A base price?

Q. Yes.

A. That would be our Mason City mill price.

Q. That is the same to every customer?

A. That is the price of cement in the bin.

Q. Is that the same price to each customer?

A. Yes.

Q. To that, in order for the customer to determine his price, what is added?

A. We add the package and the freight to the Mason City price, or we call it Mason City mill price.

Q. Is the package charge the same?

A. The package is the same price. We charge 30 cents a barrel for paper bags for them.

Mr. Maun: No other questions.

By Mr. Abdnor:

Q. Then the price your salesmen quote to the customer, and the price he is billed, is f.o.b. destination price, isn't it?

A. We invoice the customer on the basis of the f.o.b. destination, and the freight is prepaid.

Mr. Abdnor: Thank you.

By Mr. Maun:

Q. Why does the salesman carry the rate book?

A. In order that he can properly answer the question when it is put to him as to what is the price of cement in Willmar. He looks up the rate and he finds the rate is 68 cents a barrel from Mason City to Willmar, and he can add 30¢, and that is the way he gets at it.

By Mr. Abdnor:

Q. He uses the same base price to which he adds the freight?

A. Right.

Q. And that freight rate depends on the published rate?

A. That is the regular tariff rate prepared by our traffic manager. It varies at every town. The farther we go the more it is. 1

Mr. Abdnor: No further questions.

Mr. Maun: Nothing further.

WILLIAM RALPH WILKINS,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Maun: 2

Q. Your name is Ralph Wilkins?

A. William Ralph Wilkins.

Q. For whom do you work?

A. Northwestern States Portland Cement Company.

Q. When did you commence working for them?

A. October 20, 1944.

Q. When you commenced working for them, who hired you? 3

A. G. B. Pray, sales manager.

Q. Where were you living at the time you were hired?

A. My address was 4347 First Avenue South, Minneapolis.

Q. Where did you make application for employment?

A. I heard of the job through my father-in-law, and substantiated that by calling the Minne-

1 apolis office, and then making application though Mr. Pray and being hired by him.

Q. Where did you interview Mr. Pray?

A. In the Minneapolis office.

Q. Did you go to the Mason City office at all?

A. Yes, after talking with him at Minneapolis and after his approval of me at Minneapolis, I went to Mason City for further instructions, and to study their methods of business.

Q. Did you make any application for em-
2 ployment to anyone in the Minneapolis office?

A. No.

Q. Who fixed the terms of your compensation?

A. Well, in the application it asked what compensation I expected, and I put down a figure.

Q. Was your compensation fixed by someone in Minnesota, or did Mr. Pray fix that?

A. That was set by the Mason City office and Mr. Pray.

Q. After you were employed, where were you
3 stationed?

A. In the City of Minneapolis and St. Paul.

Q. What were your duties in that position?

A. My duties were normal sales procedure, to call on retail dealers, Ready-mix plants, concrete block firms and line yards.

Q. Who told you what your duties were to be?

A. Mr. G. B. Pray.

Q. Who told you what companies and types of companies you could call on? 1

A. Mr. Pray.

Q. Who was in the office in 1944 when you were hired?

A. Will you clarify that please?

Q. What persons were also working out of the Minneapolis office or in the Minneapolis office at the time you were employed?

A. The stenographer was a lady by the name of Doris Hoaglund, who is no longer with the company and has not been since 1945 or '46, I don't recall. The other party in the Minneapolis office was P. A. Danielson, who has been retired for four years or more. 2

Q. Has anyone else been in the Minneapolis office?

A. Yes, Mr. Yokum was employed by Mr. Pray in 1952.

Q. Where are you working?

A. I am assistant sales manager at Mason City presently. 3

Q. You are no longer in the Minneapolis office?

A. No, sir.

Q. How long was Mr. Danielson with the company after you became employed?

A. I believed he was retired in either 1950 or 1951.

Q. What did he do while you were working for the company?

A. Well, Mr. Danielson's duties were similar to mine, except that when I was first employed I did not call on the line yards. After Mr. Danielson's retirement, Mr. Pray advised me that it was my duty to then call on the line yard people.

Q. Will you tell the Court just what this Minneapolis office is like, physically.

A. Do you want the dimensions of the office?

Q. Just generally, yes.

A. The Minneapolis office consists of three rooms. One room in size is somewhere ten to 20 feet, the large room, and then there is a smaller office, 10 by 12 or thereabouts, and the other room is 6 by 6 or 6 by 8, and that room is used as a storage room. In the outer office there is a file cabinet and three or four chairs and two desks.

Q. While you were working for the company and prior to 1948, did you ever hire or fire any employees?

A. I never had authority at any time to fire or hire.

Q. Did you purchase any supplies of any kind for the company?

A. The only supplies ever purchased by me were the stamps which we used to mail our mail to Mason City, and I purchased those in blocks of 100 stamps at a time and placed them on my expense account, which was forwarded to Mason City, and I was reimbursed for that expenditure.

Q. Have you ever been authorized to draw

checks or drafts on the account of the Northwestern States Portland Cement Company? 1

A. At no time in my ten years have I had that authority.

Q. Just tell us what constitutes a day's work on your part, and I have reference to the period between 1944 and 1948.

A. That would vary.

Q. Tell us generally what it was.

A. Usually I would call on retail building supply dealers, and sometimes I would call at an architect's office and do some promotional or missionary work with no thought of business at that time or at any future time, just merely to make a personal acquaintance and also acquaint him with the company. I call on a concrete products plant or a Ready-mix firm, or there may be a sidewalk going in as I go by. If it were our brand of cement I would ask them if they were satisfied with the product, and if it were a competitor's brand, naturally I would speak for Northwestern States. 2

Q. Who is Mrs. Humphrey? 3

A. Mrs. Humphrey is in the Minneapolis office presently.

Q. Was she employed after you became an employee of the company?

A. Yes, she was.

Q. Who employed her?

A. G. B. Pray.

Q. Did you have anything to do with the employment of her?

1 A. No, in fact when she was employed I don't believe I was in the office.

Q. Did you fix her compensation?

A. No, sir.

Q. Do you have a telephone that comes into that office?

A. There are two lines.

Q. Does the name of the company appear in the Minneapolis telephone directory?

A. Yes, sir.

Q. In what place?

2 A. In the regular directory we are listed, and also in the classified, under cement manufacturers and wholesalers.

Q. Where does the Minneapolis office obtain its ordinary supplies for day to day operation?

A. All supplies are requisitioned from the Mason City office.

Q. You have a storage room in this office?

A. Yes.

Q. What is kept in this storage room?

A. Scratch pads, pencils, blotters, ink for our
3 office use, maybe a typewriter ribbon and a few Portland cement pamphlets.

Q. Do you keep any cement?

A. No, sir.

Q. Does the company have a bank account in the State of Minnesota?

A. Not to my knowledge.

Q. What employees of Northwestern States Portland Cement Company work out of the Minneapolis office?

A. Presently? 1

Q. During 1944 to 1948?

A. From the time I went there through 1948, as I stated previously, Miss Hoaglund, and then she left the employ of the company and Mrs. Humphrey presently takes over in her job, and Mr. Danielson and myself.

Q. How about Mr. Sig?

A. Mr. Sig lives at Willmar and had no connection with this office as far as any business transactions were concerned.

Q. Do you ever communicate with Mr. Sig 2 relative to company affairs?

A. No, sir.

Q. How about Mr. Youngstrom?

A. No, sir, the only time I talk to Mr. Sig or Mr. Youngstrom is when we are at the sales meetings at Mason City. We fraternize, as salesmen do, but it has no bearing on the transaction of any company business.

Q. Will you explain briefly the procedure you follow when you call upon a customer and he does give you an order for some cement? 3

A. You are speaking of the dealer?

Q. The dealer, yes.

A. You see, when I call on a dealer's office, and he should present me with an order while there, it usually will be on his order form and signed by him, and he will put a date of shipment or request a date of shipment.

Q. That will be a purchase order on the dealer's own purchase order form?

A. That is correct.

Q. Then what do you do with that purchase order?

A. I bring that back to the Minneapolis office and present it to Mrs. Humphrey, who in turn lists it on this daily order sheet, and it is forwarded to Mason City for acceptance there.

Q. Supposing that the dealer does not have his own purchase form, then what do you do?

A. If it is a rush order, I might pick up the telephone and call Mrs. Humphrey and ask her to contact Mason City and see if they will accept the order for shipment that day, or whenever the customer requests. She, in turn, presents it to the chief clerk at Mason City where it is processed through the normal channels there.

Q. Do you ever take an order on an order pad form which was introduced in evidence here?

A. When I first began working for the company I carried an order form, but seldom if ever, did I have the privilege of writing an order. Usually the dealer would say, "You are new here, and you don't need that pad." I phoned my orders in direct, and in other cases, some of the dealers preferred to place the order on their own pad so that they have a record.

Q. How would you learn that a dealer had placed an order direct with Mason City?

A. When the acknowledgment would be returned from Mason City that the order had been accepted.

Q. You would receive a carbon copy of that acknowledgment? 1

A. That's right.

Q. What would you do with the carbon copy you received?

A. Put it in the file.

Q. I notice in the deposition you gave earlier you said there was just one telephone line. Has there been a change since that date?

A. No, there were two lines in there before I came with the company, but what I considered one line was the fact that on the two phones, if one were busy, the other then always automatically rang. 2

The Court: Well, I guess this is a pretty good place to stop. Tomorrow morning at 10:00 o'clock.

(November 9, 1954, 10:00 a.m.)

WILLIAM RALPH WILKINS,

recalled:

DIRECT EXAMINATION. 3

By Mr. Maun:

Q. Mr. Wilkins, just what manner of use is made of your office here in Minneapolis?

A. The Minneapolis office is used for the convenience of the customer, and it is used for a clearing house for the orders they might phone in, or other line yards might phone or send by letter, and then they are sent on to Mason City after they are placed on the order sheet.

1 Q. When you call on a line yard in Minneapolis or St. Paul, just what is your procedure?

A. Well, many times when calling on line yards it is only a matter of good will. Other times it may be that they are interested in knowing the price of cement at a given point where they have a yard, and in that case we would use our rate book and take our mill price, which is an example I have here, take our standard Portland Cement—

Q. What do you mean by mill price?

2 A. Our price f.o.b. our mill.

Q. In the normal course of business do you receive quotations from Mason City as to the price at the mill?

A. Yes, in letter form when there is a change of price becoming effective on a certain date, say January 1 or July 1, when there might be a change in the price of our product.

Q. In what manner is that quotation sent to you?

A. It is sent on inter-office stationery in the 3 form of a letter.

Q. How do you use that letter in calling upon customers of the company?

A. As an example, if I were to call on a line yard who had an office at New Ulm, Minnesota, they might say, "What is your price of cement" so first I would say, "Our price of cement is $2.60 a barrel."

Q. Where?

A. F.o.b. cars, Mason City. Then the next statement he might make would be, "Well, what is my price at my place of business," so then it would be necessary to use our rate book. 1

Q. What is the rate book?

A. The rate book is a book prepared by our traffic department so we will know the freight rate into the different towns where we ship cement, or, as far as that goes, covering the shipping points in the State of Minnesota.

Q. In the quotation that is sent to you for your use in dealing with customers, is any reference made to freight rates? 2

A. None whatsoever. I have a letter here that clarifies that.

(Defendant's Exhibit 28 was marked for identification.)

Q. Mr. Wilkins, I show you Defendant's Exhibit 28 and ask you to look at it and see if you can identify it, and if you can do so will you tell us what it is.

A. This is a normal letter mailed to the different sales personnel by Mr. Pray, our sales manager, when a change of price is effective at Mason City. 3

Q. Is that a quotation which you, as a salesman, receive?

A. Yes, it is.

Q. Is that received in the normal course of business?

A. Yes.

1 Q. Is that part of the books and records of your company?

A. Yes.

Q. I notice the date on this is December 18, 1950. Did you look in your files and record to see if you could find a letter for an earlier date?

A. Yes, I did.

Q. Were you able to find such?

A. No, sir.

Q. Is this exhibit typical of the types of quotations which you received for the years 1944 2 to 1948 when you were working for the company in Minneapolis?

A. Yes, sir.

Q. Is this exhibit the same in all respects except for the price differential which may appear on earlier quotations?

A. Yes, sir.

Mr. Maun: Defendant's Exhibit 28 is offered in evidence.

By Mr. Abdnor:

Q. With this information that is in this docu- 3 ment, together with the rate book that you have, you are able to quote the customers prices on cement at any place of destination, aren't you?

A. Will you repeat that?

Q. With this information that is in this document, together with the rate book that you have, you are able to quote the customers prices on cement at any place of destination, aren't you?

A. No, sir, that is not quite correct. We can tell them what their freight rate is to destination.

Q. F.o.b. destination? 1

A. To their place of business, free on board at point of delivery.

Q. That is what they pay?

A. They pay the freight, but for convenience we prepay the freight for them.

Q. So you are able to quote them the price f.o.b. destination with that information and the book?

A. We give them a delivered price.

Mr. Abdnor: That's right. No objection.

The Court: Received. I want to find out what 2 this business means of being a member of the Portland Cement Association. It is not just curiosity, I mean the use of that name.

By Mr. Maun:

Q. Will you answer that question, Mr. Wilkins?

A. I am not familiar with that. I cannot answer that question.

Mr. Maun: We have our next witness who can answer that question.

Q. Do you obtain an order every time you 3 call upon a customer?

A. No, sir. When selling in the city of Minneapolis or St. Paul, I very seldom receive an order when I make a call. The orders were usually phoned to the Minneapolis office or came in by letter, and on an occasion, as I stated previously, the dealer might give me an order, but it was an

uncommon thing for me to receive an order when I made my call.

Mr. Maun: No further questions.

CROSS EXAMINATION.

By Mr. Abdnor:

Q. Mr. Wilkins, you and I have met before?

A. Yes, sir.

Q. As a matter of fact, we met when I caused your deposition to be taken last spring, is that correct, at which time you testified under oath at the deposition proceedings?

A. Yes, sir.

Q. You are the same Mr. Wilkins upon whom the summons and complaint was served in this case, are you not?

A. Yes, sir.

Q. Mr. Wilkins, I am going to review just a little bit the chronology you gave yesterday. I understand you came to work with the cement company in Minneapolis in 1944?

A. Yes, sir.

Q. At that time you did what type of work?

A. At that time, when first employed, as I stated, I succeeded Mr. Dierrell and called on the concrete products plants, architects, and Ready-mix firms, sidewalk contractors and contractors of a general nature, doing more or less missionary work and good will work for the company.

Q. When did that type of work change?

A. When Mr. Danielson retired.

Q. Mr. Danielson, in your first years, was doing what? 1

A. Mr. Danielson called on the line yards and dealer sales, and I assisted him somewhat in the Twin Cities dealer sales, however, when we were both with the company.

Q. If I understand correctly, when Mr. Danielson retired, that was in 1948?

A. No, sir, 1950 or '51.

Q. He retired in '50 or '51?

A. Yes, sir.

Q. When he retired, you succeeded to the work he was doing before? 2

A. When Mr. Danielson retired, it was necessary for me to do all the work, because I was the only one left in the Twin Cities in a similar capacity.

Q. Someone else ultimately came to work with you?

A. Mr. Yokum was hired later.

Q. And then he did the work you had done prior to Mr. Danielson's retirement?

A. Yes, sir. 3

Q. So then you stepped into Mr. Danielson's place by virtue of that arrangement?

A. Yes, sir.

Q. Then, if I understand your testimony correctly, during this year after your deposition last spring, you received a promotion?

A. Yes, sir, due to further retirements there were some changes in our organization and one of those affected me.

Q. You are now what?

A. Assistant sales manager in Mason City.

Q. Did you have a title before you went to Mason City?

A. No, sir.

Q. Then you wouldn't have called yourself an assistant sales manager while you were in Minnesota?

A. That's right.

Q. Of course, you wouldn't call yourself that unless you had authority to so identify yourself. Is that a fair statement?

A. Yes, I believe it is.

Q. Did you ever identify yourself while in Minnesota as being the regional manager or Minnesota manager?

A. No.

Q. You wouldn't have called yourself a regional or Minnesota manager unless you had authority to call yourself that, would you? That is a pretty obvious question, isn't it, Mr. Wilkins?

A. Yes and no.

Q. Would you have called yourself a regional manager or Minnesota manager unless you had authority to call yourself by that title?

A. I may have called myself something that the company would not call me.

Q. Then you may have called yourself a regional manager?

A. No, I at no time ever called myself a regional manager.

Q. Why would you call yourself something 1
that the company would not call you? Under what circumstances? You are not a bragging man, are you?

Mr. Maun: I submit that is a little argumentative.

The Court: The last part is.

By Mr. Abdnor:

Q. Answer the first part, why would you call yourself a regional manager if you were not that?

A. I wouldn't call myself a regional manager.

Q. Now, did you ever have occasion to iden- 2
tify yourself as being a district manager of this company?

A. On a few occasions I called myself that.

Q. You wouldn't have called yourself a district manager unless you had authority of your company to call yourself a district manager?

A. I did.

Q. Why?

A. I was the oldest employee after succeeding Mr. Danielson in the Twin Cities, and for 3
that reason on a few occasions I did.

Q. You called yourself a district manager?

A. Yes, I did.

Q. For what purpose? You must have a purpose for attaching that title to yourself, don't you?

A. No, sir.

Q. Would you do it on your personal credit obligations? Might you have?

A. I might have.

Q. Would you have done it in connection with company business?

A. I may or may not have.

Q. You may have held yourself out to be a district manager on company business in this state, might you not?

A. Not in this state.

Q. You never held yourself out in the State of Minnesota to be a district manager of this company on company business?

A. I called myself the Twin Cities district manager.

Q. You did call yourself a district manager then, didn't you?

A. On a few occasions.

Q. Yes, and it related to company business too, didn't it?

A. Will you clarify that, please?

Q. I mean in connection with the business of your company, did you ever identify yourself as being a district manager of that company? It is a simple question. You should know the answer to that.

Mr. Maun: Mr. Abdnor, I again submit your statement is argumentative.

The Court: I will sustain that. He is answering the questions.

By Mr. Abdnor:

Q. Under what circumstances would you hold yourself out to be a district manager?

A. Well, in clarifying that statement, the Twin Cities sales, the dealers were my responsibility, and it was my responsibility to call upon the line yards, not Mr. Yokum's but mine, and I probably made that distinction mostly for that reason. 1

Q. Did you ever tell the dealer that you were the district manager of the company?

A. No, they were informed when Mr. Danielson retired that I was the Twin Cities representative.

Q. Were you in the habit of holding yourself out to be a district manager? 2

A. Not generally.

Q. Not generally in the habit of it?

A. No, sir.

Q. You didn't sign your name and just at times automatically put down district manager?

A. No, sir.

Q. You don't recall that you ever did such a thing?

A. I believe I signed a letter, or maybe several letters with that title.

Q. You signed correspondence with that title as I understand you. Now, Mr. Wilkins, you heard Mr. Pra testify yesterday with respect to the property that your company owned in this state, the personal property in the office and so forth? 3

A. Yes, sir.

Q. You heard him testify with respect to the ownership of automobiles?

A. Yes, sir.

Q. Did you drive a company car?

A. Yes, sir, I did.

Q. Did other people here in Minneapolis drive a company car?

A. Mr. Yokum.

Q. Did you buy those cars in the manner he described, or were they bought in Iowa?

A. When I went with the company only two cars were purchased for my use. At that time cars were difficult to buy and bids—I was authorized to go and get bids from several companies which, in turn, were forwarded to Mr. Pray's office in Mason City, and the decision was made at Mason City whether or not those bids would be accepted, and the check for payment of those cars was made on Mason City.

(Plaintiff's Exhibit S was marked for identification.)

Q. You applied for a license on some of these automobiles?

A. Yes, sir.

Q. I am now going to hand you a series of documents, the front sheets marked Plaintiff's Exhibit S. I will ask you to look at the first photo-copy sheet and state whether or not the signature on that sheet is your signature?

A. Yes, sir, it is.

Q. Going now to the third photo-copy sheet, I will ask you to look at the signature on that sheet and tell me whether or not that is your signature?

A. Yes, sir. 1

Q. Is that application for an automobile license true and proper in all respects as you made it out?

A. It is except that I signed my name as district manager.

Q. You signed your name as district manager on this, didn't you?

A. Yes.

Mr. Abdnor: State's Exhibit S is offered in evidence. I might add, your Honor, for the record, that State's Exhibit S is a copy of an application for an automobile license certified to be correct by the Secretary of State of the State of Minnesota, and the certification is attached. 2

Mr. Maun: No objection.

The Court: Received.

By Mr. Abdnor:

Q. Exhibit S identifies a 1952 model Pontiac, Mr. Wilkins.

A. Yes.

Q. Did you drive that car?

A. No, sir, I did not. Joe Meyer drove that car. 3

Q. Where was that bought?

A. That was bought in Minneapolis.

Q. Was that one of those cars that was bought here because cars were so hard to get?

A. No, sir, that car, I believe was purchased after bids were submitted in the usual manner, as I suggested, and for convenience, because Mr.

Meyer previously drove a Pontiac and I drove a Pontiac and I had my service work done at that particular garage.

Q. That is a different reason than you gave here a while ago, isn't it?

Mr. Maun: I suggest that Mr. Abdnor is entirely wrong. The witness testified he purchased two cars for himself.

The Court: Well, I heard what his testimony was.

(Plaintiff's Exhibit T was marked for identification.)

By Mr. Abdnor:

Q. I now hand you a document marked Plaintiff's Exhibit T, being an application for automobile license and related documents, and refer to the third copy page, and I will ask you if that is your signature that appears on that page.

A. May I look at it?

Q. Please do.

A. Yes, sir, that is my signature.

Q. That appears on the third page?

A. Yes, sir.

Q. Now, you have already examined the next page and the fourth page, and I will ask you whether or not your signature appears on that?

A. Yes, sir, it is.

Q. Is the information contained on this application for a license true and correct as you have reviewed it?

A. My signature is correct.

Q. Is the other information there true and correct? 1

A. As district manager. That pertains to the Twin Cities.

Q. I am not asking you what it pertains to, I am asking you if that is correct information?

A. I was in charge of the Twin Cities district, and that is the reason I signed my name that way.

Q. That is the reason you signed as district manager for Northwestern States Portland Cement Company, is that what you said? 2

A. I probably should have signed my name as district sales representative.

Q. Now I make reference to the last sheet and ask you if that is your signature that appears on the last sheet of that exhibit?

A. That is my signature, and it pertains to the automobile which—

Q. I will ask you about the automobile later. That is your signature?

A. Yes, sir.

Q. Again you have identified yourself on that sheet as district manager? 3

A. Yes, sir.

Mr. Abdnor: I offer in evidence Plaintiff's Exhibit T, being an application for automobile license, and related documents, all certified to be true and correct copies by the Secretary of State.

Mr. Maun: Well, I will object to these on the grounds that they relate to years not before this Court, and not material.

1 Mr. Abdnor: May I make a statement?

The Court: Yes.

Mr. Abdnor: One of the issues raised by the pleadings in the defense of this case is that no proper service was made on a proper individual, and it has been established that this is the man upon whom service was made, and I believe that was in 1953.

Mr. Maun: If the exhibit is submitted for that purpose, then I would have no objection to materiality on that ground.

2 The Court: It may be material on both grounds. It is not anything that changes. I will receive it anyhow.

By Mr. Abdnor:

Q. Now, handing you again Plaintiff's Exhibit T, Mr. Wilkins, I will ask you if that does not describe a 1951 model Pontiac?

A. Yes, sir, it does.

Q. Did you drive that car?

A. Yes, sir, I did.

Q. That is one you used?

3 A. Yes, sir.

Q. That car was bought in the Twin Cities too, wasn't it?

A. That was bought at Lake Street Pontiac, yes, sir.

Q. Then that did not fall into the category of the two cars you purchased because of a shortage?

A. Yes, sir, that is the car.

Q. That is the car you bought in 1951 because automobiles were in short supply? 1

A. No, sir.

Q. Will you clarify your testimony?

A. Yes, sir, there was an instance where once again bids were asked for and received. At the time that car was purchased, I believe I got bids from four or five different automobile dealers.

Q. Do you recall testifying such a short time ago that you bought cars for yourself in Minnesota because of the shortage of cars?

A. That was true in 1946. You might check 2 the record and find there were two cars purchased in 1946. Mr. Meyer purchased one and I purchased the other.

Q. As long as you suggest it, I wish I could.

Mr. Maun: Can't you, Mr. Abdnor?

Mr. Abdnor: No, they are destroyed over six years back.

Q. Now, referring again to Plaintiff's Exhibit S, that document you signed in that exhibit identifying yourself as district manager, and that 3 was dated October 15, 1952. Was that correct?

A. Yes, sir, and it was signed in Minneapolis.

Q. Referring to the fourth sheet of Exhibit T, the document you signed as being a district manager in that exhibit, it was dated October 5, 1951, was it not?

A. Yes, sir.

Q. And the last document of that exhibit which bears your signature as district manager was dated October 15, 1952, was it not?

A. Yes, sir, that was for renewal of license plates.

(Plaintiff's Exhibit U was marked for identification.)

Q. I hand you now a series of documents identified as Plaintiff's Exhibit U. Calling your attention to the first copy page, I will ask you if that is your signature that appears on that page?

A. Yes, sir.

Q. And on that page you are identified as district manager in your own handwriting?

A. Yes, sir.

Q. And that was sworn to as being true and correct before a notary public of the State of Minnesota, was it not?

A. That was probably notarized after I signed it.

Q. That is what I mean. I now call your attention to the third copy page of this exhibit and ask you whether or not that is your signature appearing thereon?

A. Yes, sir, it is.

Q. And the words "district manager" appear in your own handwriting, do they not?

A. They do.

Q. On this exhibit, the first page is dated February 25, 1952?

A. Yes, it is.

Q. And the last page I showed you is dated October 15, 1952?

A. Yes, sir.

Mr. Abdnor: Plaintiff's Exhibit U is offered in evidence.

Mr. Maun: The same objection as was made to Exhibit T, that it is not material as to matters which took place subsequent to 1948, except on the question of service.

The Court: Overruled, received.

By Mr. Abdnor:

Q. Calling your attention now, Mr. Wilkins, to Plaintiff's Exhibit U, it will be observed that this licensed a 1952 Chevrolet, is that right?

A. Yes. May I clarify that?

Q. Did you drive this car?

A. No, sir.

Q. Who used this car?

A. Mr. Yokum used the car, and my reason for purchasing the license—

Q. I didn't ask you your reason for purchasing the license yet. Did Mr. Yokum purchase this car or did you?

A. Mr. Yokum was not employed when that car was purchased.

Q. So you purchased the car before Mr. Yokum was employed, is that right?

A. After submitting bids to Mason City and after receiving my instructions from Mason City to purchase a car for the new man. There were several being interviewed at the time and they wanted the car to be purchased and ready for the new man.

Q. Now, I will ask you what was anticipated

1 by your first question when you caused this car to be licensed on February 25, 1952.

A. Well, every new motor vehicle has to be licensed before it can be driven.

Q. Why did you do it instead of Yokum?

A. Mr. Yokum was not in the employ of the company at the time.

Q. Had he been there, would he have done it?

A. In all probability.

Q. That car was licensed again on October 2 15, 1952. Was Mr. Yokum there at the time?

A. Yes, he was.

Q. You applied for the license though?

A. I did. I also applied for Mr. Meyers' license.

Q. Then you applied for all the licenses?

A. As a convenience measure. License application was made at the Federal Building at Third Street and Second Avenue South.

Q. Mr. Wilkins, I am going to hand you a book and ask you if you have ever seen that kind 3 of a book before.

A. I have seen that book once at the Minneapolis Airport. I am familiar that there is a Minneapolis City Directory, as there are in all major cities.

Q. Have you ever used that?

A. No, sir.

Q. Do you know how to use it?

A. I believe that the names and addresses of

people are in there, yes. I can honestly say at no time have I ever used it. 1

Q. But you know this is a city directory?

A. Yes, it so states.

Q. I will ask you to look up the name of Northwestern States Portland Cement Company in that directory and read that entry to the Court.

A. "Northwestern States Portland Cement Company, William R. Wilkins, district manager, 1010 Roanoke Building."

Q. That is the address of your Minneapolis office? 2

A. Yes, sir.

Q. I will now ask you to refer to your own listing in this city directory, Mr. Wilkins, and read that to the Court.

A. "Wilkins, William R., district manager, Northwestern States Portland Cement Company, 7001 James."

Q. Is that your address?

A. It was.

Q. I think for further identification you should read the year to which this relates. 3

A. 1953.

Q. Mr. Wilkins, you heard Mr. Pray's testimony yesterday to the effect that you salesmen in the Twin Cities called on your customers more often than they do in the country.

A. That's right.

Q. You heard him say that you called on these Twin Cities customers more frequently than once every three weeks, is that correct?

A. At times, yes, and sometimes no. By that I mean this, it may be necessary at different times when calling at one customer that I might have been there today and immediately something would come up of a nature that he would like to discuss with me, and he would call me on the telephone and ask me to stop by and see him.

Q. You came to know these men pretty well by virtue of the calls you made on them?

A. Yes.

Q. You said a while ago that when you went in and called on the customer, your first price was the f.o.b. price Mason City, and that was so much, and the customer would respond and say "How much is the freight and how much would it cost here," and you would say that the cost here was so much. If you called on a customer a few times, you didn't go through all that conversation before you told him how much that cement was delivered, did you?

A. After I had called on the customer a few times—in fact, even probably the first time I called, the cement price would not be mentioned at all. As I stated many times previously, many calls were of a good will nature.

Q. Let's talk about those calls in which you are quoting prices to the customer. When you quote prices to a customer, you know well, you don't go through this formality of quoting f.o.b. Mason City and having him ask you how much it is delivered. Isn't it a fact when you did quote

him, you quoted him the price without this question and answer proposition you referred to earlier? 1

A. Not in all cases, no.

Q. In some cases at least you do it that way, just give them the delivered price when they ask the price.

A. Those quotations are mailed from Mason City.

Q. Let's get back to my question.

Mr. Maun: Give the witness a chance.

The Court: Go ahead. 2

The Witness: As Mr. Pray stated yesterday, the line yard operators in many cases, in fact in most cases, they request a complete price list from Mason City on mixed car commodities, and also on their freight cars of cement.

By Mr. Abdnor:

Q. Your earlier testimony had reference to the occasions on which you quoted prices to customers. Do you recall that testimony?

A. Yes, sir, I do.

Q. Do you recall that you said you would give them an f.o.b. price and they would say, "Well, how much is the freight, or how much is it delivered here," and then you would compute the freight price and give them that? 3

A. Yes, sir.

Q. My question simply is that on many occasions when you are asked for a price of cement, you give the delivered price immediately.

A. We had to quote the f.o.b. Mason City price.

Q. A customer in Minneapolis who has a Minneapolis place of business asks how much cement is and you gave him the delivered price in Minneapolis?

A. We gave him the Mason City price plus the freight.

Q. You don't say to him, well, in Mason City it is so much, and then he will say, "How much is the freight?" In other words, the testimony you gave is not accurate with respect to every case in which you quote prices.

A. Most of the customers, in fact 95 per cent of the customers that I have called on in my tenure in the cement business, were in the business prior to my time in the cement industry, and many of them prior to the time I was born, and they probably know as much or more about the cement business than I do.

Mr. Abdnor: I move that be stricken as not responsive.

The Court: Stricken out.

By Mr. Abdnor:

Q. Now will you read the question, please.

(Last question read by reporter.)

A. The price changes that come from Mason City to me, when there is a change in price, is our f.o.b. Mason City price, and to that we add our freight, and that is the delivered price at the dealer's warehouse.

Q. When a customer asks you the price of cement, do you give him the delivered price right off the bat? 1

A. No, sir, because sometimes in the case of a line yard, as I outlined to you before, it is necessary to use the rate book, but we can tell him what his price will be at a particular point of delivery, or his delivered cost.

Q. If you call on a cement purchaser in the Twin Cities with his place of business here, that you have called on 50 or 75 times before, and he asks you the price of cement, what do you tell him? 2

A. The Minneapolis or St. Paul dealer usually knows the price.

Q. They never ask you the price?

A. They are advised every time there is a change.

Q. Will you answer the question. Do they ever ask you the price of cement? Have you ever been asked by a Twin Cities dealer, the price of cement? 3

A. Maybe on one or two occasions.

Q. In other words, nobody has ever asked you how much cement is?

A. I am speaking now of Twin Cities dealers.

Q. Yes, I am too.

A. Because they have a number of cement people calling on them and they have a number of railroad representatives calling on them. They know the freight rate as well as we do, and they

1 also know the cost at our mill and the cost at competitive mills.

Q. Is the cement price the same among all companies?

A. No, sir.

EXAMINATION.

By the Court:

Q. Do you have any authority at all to meet competition prices occasionally, and make adjustments and one thing and another to meet the 2 competition of some company to get a piece of business?

A. Do I personally, sir?

Q. Yes.

A. No, sir. Anything of a policy nature or any change in any program would be authorized through Mason City. It would not be authorized by me.

Q. If you wanted to get a deal and you wanted to make a little adjustment in price, you would call Mr. Pray, is that the idea, or who 3 would you call?

A. You are speaking now of the Twin Cities market?

Q. Yes.

A. No, sir, because we didn't make any deals. We have one price into the Twin Cities.

Q. And you don't budge, is that it?

A. That's right, sir.

Q. That is your price plus the freight cost?

A. That is our Mason City price plus the freight. Whether it be St. Paul or Minneapolis, the freight is the same, plus your three per cent Federal tax. 1

Q. Is all the cement that you get orders for here in the Twin Cities, or all in Minnesota for that matter, is it always delivered by train, or is it occasionally delivered by bus or truck?

A. Always by rail. We have no facilities for loading anything else.

Q. Suppose a buyer wants to go down to Mason City and pick it up. 2

A. No, sir, he is not permitted to do so.

Q. You won't let him do it?

A. That is correct.

Q. Even if he lives 50 or 60 miles?

A. Even if he lives in Mason City proper. There are a number of lumber dealers and building supply houses and Ready-mix firms there, and all their cars are loaded and shipped to them.

Q. Right in Mason City?

A. Yes, sir.

Q. You load a freight car and unload? 3

A. We don't unload it, it is transferred to their place of business.

The Court: That is all.

CROSS EXAMINATION.

By Mr. Abdnor:

Q. If I understand your testimony correctly, from 1944 to 1954 there were only one or two

occasions when you were asked for the price of cement?

A. I am speaking of me personally.

Q. Yes, you personally.

A. There were very few occasions.

Q. And I understand your testimony is that only once or twice in all those ten years were you called upon to give the price of cement?

A. Will you please word that a little differently.

Q. I am trying to quote your testimony.

The Court: Would you like to have the question read, or have him restate it? What do you want?

The Witness: I would like it stated in a little different way.

The Court: That is saying you don't understand it?

The Witness: Yes.

The Court: All right, he has a right to say that.

By Mr. Abdnor:

Q. Is it your testimony that in the nearly ten years that you worked as a salesman in the Twin Cities, you only were called upon to quote the price of cement once or twice in that period? Is that your testimony?

A. In general terms I believe it was. Now, in speaking of Minneapolis and St. Paul, I am not speaking about when the line yard people called up when I was asked by them, because that has no bearing on Minneapolis and St. Paul.

Q. I understand that. 1

A. No, I was asked from time to time by the line yards what the prices were, say at New Ulm or maybe Marshall, Minnesota, or some one point, and then, of course, it would be many, many times more, but usually I wasn't asked the price of cement by my Twin Cities accounts.

Q. Now, as I recall Mr. Pray's testimony, your company sold products other than cement, is that right?

A. For the convenience of small country lumber yards throughout Minnesota we did stock 2 at Mason City a supply of plaster and lime, and white cement where they might put ten sacks in a car, or twenty, and a ton of lime, where the dealer was of a small nature and didn't feel he could afford to buy a carload of lime because his call for that product was such that it would be a wasted investment. For a convenience measure, there again the company did carry and still does carry a stock of lime and white cement. We do not any longer carry plaster.

Q. During the years that you carried plaster— 3 you have carried plaster during the years you worked for the company?

A. Yes, sir.

Q. Did you ever sell any plaster or these other non-manufactured products, or I mean products not manufactured by your company, in the Twin Cities?

A. No, sir.

Q. Never sold any?

A. Not to my knowledge.

Q. There are some small independent lumber yards in the Twin Cities.

A. We do not sell to lumber yards in the Twin Cities. There is a gentleman's agreement between the hard material dealers and the lumber dealers that one does not stock lumber and the other does not stock plaster and cement.

Q. None of your lumber dealers sell it?

A. Not to my knowledge. At least we don't sell any to them.

Mr. Abdnor: That is all.

By the Court:

Q. You say lumber yards don't handle cement?

A. In the suburbs they do, but in Minneapolis and St. Paul proper.

Q. Mr. Pray was talking about Fullerton's.

A. You are thinking of the George Fullerton yard in St. Louis Park, while the Fullerton Lumber Company is owned by his brother Jim, and they have a string of about 100 yards throughout two or three states.

RE-DIRECT EXAMINATION.

By Mr. Maun:

Q. Will you explain a little more fully about making application for a license on these automobiles? You were going to say something about how you happened to do it.

A. Well, Mr. Pray would send the three ap

plications for license plates to me and asked that I secure the licenses. That is how it came about, and that happened, I believe, two or three years that I did it, and Mr. Danielson used to do it prior to that time, and sometimes we would individually put the licenses on our expense accounts. If Mr. Danielson couldn't get them for us we would pay for our own licenses, otherwise at the end of the week when I mailed my expense account in, I would put all three licenses in. Sixty dollars is quite a bit of money for one person to be holding the bag for at any one time. 1 2

Q. Who instructed you to sign your name as district manager?

A. No one. I did that on my own.

Q. Did anyone ever instruct you to sign your name?

A. No, sir. There again I did it myself.

Q. Were you ever informed by any officer of the company that you were a district manager?

A. No, sir.

Q. Were you ever informed by Mr. Pray that you were a district manager? 3

A. No, sir, not district manager.

Q. Your last answer is not quite clear. You leave something hanging when you say "No, sir, not district manager." What do you mean by that?

A. Well, I was called district sales representative, and that meant Minneapolis and St. Paul.

Q. Who called you that?

A. Well, Mr. Pray called me that once or twice, personally, to myself.

By the Court:

Q. Called you what?

A. District sales representative.

Q. Mr. Pray did?

A. Yes, sir.

By Mr. Maun:

Q. To what district did he refer?

A. Minneapolis and St. Paul.

Mr. Maun: May it please the Court, I do not know whether the original summons and complaint have been found in this action.

The Court: No.

Mr. Maun: I wonder if it might not be stipulated then, that the service of the summons and complaint was had on Mr. Wilkins, who is now a witness?

Mr. Abdnor: It may be so stipulated, that it was served on Mr. Wilkins.

Mr. Maun: No further questions.

RE-CROSS EXAMINATION.

By Mr. Abdnor:

Q. I just have one brief question. We have referred to the Twin Cities sales territory. Can you briefly identify it geographically?

A. Yes, the Twin Cities sales territory would be Minneapolis and St. Paul proper, and South St. Paul.

Q. Does it include any suburbs besides South St. Paul?

A. Well, Richfield, St. Louis Park and Golden Valley.

Q. Would it include all of Hennepin and Ramsey Counties?

A. No, sir. Mr. Meyer called on dealers in Hopkins and Excelsior and North St. Paul and places like that.

Q. How about White Bear?

A. White Bear was handled by Mr. Meyer.

Q. And you say that geographically then, the trade territory takes in the Twin Cities proper and the suburbs that are immediately adjacent to it?

A. I think that is all.

Mr. Abdnor: That is all, thank you.

Mr. Maun: No further questions.

The Court: Take a five minute recess.

(Recess.)

PETER ANDERSEN,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Maun:

Q. Mr. Andersen, where are you employed?

A. Mason City.

Q. By whom?

A. Northwestern States Portland Cement Company.

Q. What is your position with that company?

A. At present I am vice president and assistant general manager.

Q. How long have you had this position?

A. Since the first of June.

Q. Prior to that time, what was your position with the company?

A. Secretary and treasurer.

Q. For what period of time were you secretary and treasurer?

A. I was secretary from 1929, and I was secretary and treasurer from 1941.

Q. As secretary and treasurer of the company, what were your duties?

A. I had charge of the accounting department.

Q. In charge of the accounting department, what exactly did you do?

A. I performed all the duties of a secretary and I had charge of the books and records of the company.

Q. During the years 1933 to 1944, were you familiar with the operation of the Minneapolis office?

A. Yes.

Q. You have been in the court room during the testimony of Mr. Wilkins, have you not?

A. Yes.

Q. And during the testimony of Mr. Pray?

A. Yes.

Q. Was there any difference in the operation of the Minneapolis office prior to 1944? From 1933 to 1944 than from 1944 to 1948?

A. I think the general plan of operation was the same.

Q. There has been some reference here to a listing of your company in the Minneapolis city directory. Was that listing authorized by the Mason City office of Northwestern States Portland Cement Company? 1

A. Not to my knowledge.

Q. As treasurer of the company, were you in charge of the payroll records of the company?

A. Yes.

Q. Under what title was Mr. Wilkins carried?

A. Salesman. 2

Q. Was that true during all the period of time up until the time he was appointed assistant sales manager?

A. Yes.

Q. What is meant by the Portland Cement Association, Mr. Andersen?

A. The Portland Cement Association is a national organization, an association of the Portland cement manufacturers. Its primary purpose is the promotion of the use of cement and concrete. They also do considerable in the research line. 3

Q. What does the word "Portland" mean?

A. Well, that is the type of cement that we manufacture. It derived its name originally from the fact that it was developed in England, and the resulting concrete they thought, looked like the rock outcroppings around Portland, England, and it acquired the name that way.

Q. Are you familiar with the pricing practices of your company?

A. Generally, yes, sir.

Q. Was there any change in prices between the years 1944 and 1948 to the Twin Cities marking area?

A. I don't believe I could answer that question offhand. Quite likely there were no changes during that time, but I can't say that for sure.

Q. Are prices changes common in your industry?

A. No.

Q. About how often would you say there is a price change?

A. Sometimes the price will remain the same for many years.

Q. Did you have any different classes of customers in the Twin Cities area or in the Minnesota area insofar as price classifications are concerned?

A. No.

Q. What do you mean by that statement, Mr. Andersen?

A. Our price was certified at the same for everybody.

Q. Would you give anyone the benefit of a favorable price if they were a quantity purchaser?

A. No.

Q. Who handled the collection of delinquent accounts in Minnesota, Mr. Andersen?

A. The matter of credits and the collection of accounts was something I had charge of all during that period.

Q. During what period do you have reference to? 1

A. From '33 to '48.

Q. If an account became delinquent in Minnesota, what would be the procedure with reference to it?

A. My procedure would be to write them, and if that didn't do any good, I would have to come up here and see them.

Q. Did you work through the salesmen in Minnesota insofar as collection of accounts was concerned? 2

A. No, I didn't work through salesmen. Sometimes I would have the salesmen take me around if it was an outlying country point. I would come up and join the salesman and have him take me there.

Q. Who passed on the credit of customers when orders came in?

A. I did.

Q. You did that personally?

A. Yes.

Q. Who handled the adjustment of customers' complaints, Mr. Andersen? 3

A. Well, those would be handled by the sales department.

Q. Who in the sales department?

A. Well, it would be the sales manager.

Q. Did you at any time authorize the salesmen working in Minnesota to pass upon the credit of customers?

A. No.

Q. Showing you Defendant's Exhibit 11, Mr. Andersen, I will ask you if you recognize that exhibit?

A. Yes.

Q. Just what is that?

A. This is our invoice which is made up in our office, apparently in five copies.

Q. Made up in your office where?

A. Mason City.

Q. What becomes of those copies, Mr. Andersen?

A. Normally the first two, the original and the duplicate, would be mailed to our customer along with the bill of lading. The office copy would be retained in our office in Mason City, and the last two copies, or the last three copies represent the bill of lading.

Q. Now, I show you Defendant's Exhibit 9, Mr. Andersen, and I will ask you if you recognize that, and if you do so, will you tell us what it is.

A. Defendant's Exhibit 9 is a load order.

Q. In your normal course of business, do you have anything to do with the load order?

A. The second copy of this load order, after the car has been loaded, would come to the accounting department for invoicing, and prior to loading it would come to the credit department for a credit okay.

Q. Would you or someone under your jurisdiction pass on the credit?

A. Yes, either I or my assistant would pass on the credit. 1

Q. What would happen in cases where the credit was not approved?

A. The car would not be shipped.

Q. Is the credit of the customer passed on in each instance regardless of the manner in which the order comes in to your company?

A. That's right.

By the Court:

Q. In every instance you pass on it even though you have done business for a long time? 2

A. Yes, every load order that goes through the office has either my okay or my assistant's.

By Mr. Maun:

Q. Every order that is shipped out of your plant?

A. Each individual car.

Mr. Maun: No further questions.

CROSS EXAMINATION.

By Mr. Abdnor: 3

Q. Mr. Andersen, with respect to price changes, I realize that you were not certain on that matter, but I wonder if you do recall that controls were lifted by the Federal Government in 1946. Do you recall that?

A. No, I don't recall that date.

Q. You recall that controls were lifted by the Federal Government?

A. Yes.

1 Q. Were your products subject to control at the time that the wartime laws were enacted?

A. I am not even sure on that.

Q. Oh, you don't know about that?

A. No, I am not sure.

Q. You don't know whether or not costs of your company increased like they increased in many industries following the lifting of controls, that is, labor costs and material costs?

A. Yes, they have been going up steadily right along.

2 Q. Wouldn't that indicate from that, that there had been some increases from time to time?

A. There have been, but I am not sure about this four year period.

Q. You don't recall whether or not within that four year period, without knowing at this time when controls were lifted by the Federal Government, whether or not your prices went up then?

A. Frankly the controls wouldn't have anything to do with it. I just don't know whether we 3 had a price increase then or not.

Q. Do you know how many price increases you have had since 1944?

A. Not offhand, no.

Q. So that your statement with respect to the fact that price changes sometimes don't occur for many years, is not necessarily applicable to this period following, let us say, World War II?

A. I am not sure.

Q. What I mean is that you qualified your earlier statement by saying you are not sure as to the period following World War II. 1

A. I am not sure about the period you are talking about.

Q. Let's talk about the entire period of World War II. Is your statement with respect to the frequency of price changes applicable anywhere in there?

A. I would say that during that period you have stated now, there probably have been about three price changes. 2

Q. You are not sure just when they came?

A. No.

Q. Mr. Andersen; the income tax return forms which were offered in evidence by the State show on them that you had a deduction from gross income allowed, or a credit allowed, on account of contributions made by your company to the Minneapolis Community Chest. Are you familiar with that?

A. Yes. 3

Q. Did your company make contributions to the Minneapolis Community Chest?

A. Yes.

Q. That was a regular year-to-year practice?

A. Yes.

Q. That went on during the time that you were with the company, and specifically from 1933 to 1948?

A. I believe so.

Mr. Abdnor: That is all.

Mr. Maun: I have no further questions.

EXAMINATION.

By the Court:

Q. You say this Portland Cement Association—is that what you call it?

A. Yes.

Q. What do you do, get a franchise or something, from that association to operate?

A. No, we are members of the association.

Q. All right, that is the same thing. Once you are a member you are entitled to sell the product?

A. It is a cooperative frame for a research organization supported by the whole cement industry of the United States and Canada.

Q. Atlas would not support Portland, would it?

A. Universal Atlas?

Q. Yes.

A. They make Portland cement.

Q. Oh, they do?

A. That is their product.

Q. So the word Portland then, has to do with the quality of the product, how it is manufactured?

A. Yes, how it is manufactured.

Q. When you became a member of the association, were you allocated certain territory in which you could sell your product?

A. No, sir. 1

Q. When did you become a member?

A. Oh, we have been a member since—as long as I have been with the company.

Q. Probably as long as the company has existed?

A. No, I believe our company is a little older than the association.

Q. With that name Portland too? You changed the name?

A. No.

Q. Isn't the name of your company Northwestern States Portland Cement Company? 2

A. Northwestern States Portland Cement Company.

Q. So you used the name before the word Portland existed?

A. No, we were talking about the Portland Cement Association.

Q. Then you do, down there in Mason City, actually mix or manufacture the Portland cement?

A. We do.

Q. What is it manufactured from? 3

A. Limestone and clay.

Q. Obtained from where?

A. Right at our plant.

Q. Have you got limestone right there at Mason City?

A. Yes.

Q. Where, in the hills around there?

A. No.

Q. Where do you get it from?

A. There is a deposit right there adjacent to the plant.

Q. And clay too?

A. Yes.

The Court: That is all.

RE-DIRECT EXAMINATION.

By Mr. Maun:

Q. Mr. Andersen, you are perhaps so familiar with this matter you think everyone else is. The word "Portland" is merely a designation of a type of cement?

A. That's right.

Q. It is not a patented process or anything of that kind?

A. That's right.

Q. Anyone can commence the manufacture of Portland cement and use the name?

A. Right.

Q. And this association to which you belong is merely a trade association?

A. Yes.

Q. It has no control of any kind whatsoever over your manufacturing processes or your use of the word?

A. None whatever.

Q. Your company manufactures cement from materials gathered locally in Mason City, Iowa?

A. That's right.

Q. Are any of those materials obtained in the State of Minnesota?

A. No.

Mr. Maun: That is all.

By Mr. Abdnor:

Q. Mr. Andersen, the Portland Cement Association does not attempt to get itself involved into competition as between companies?

A. No.

Q. It does not attempt to favor your company over another company?

A. That's right.

Q. You are all members of this organization, let us say, here?

A. That's right.

Mr. Abdnor: That is all.

Mr. Maun: No further questions.

Mr. Maun: The defendant rests.

DANIEL J. LEAHY,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Abdnor:

Q. Mr. Leahy, where do you live?

A. 3834 Huntington Avenue, St. Louis Park.

Q. You appear here in response to subpoena that was served upon you?

A. That is correct.

Q. Where are you employed?

A. Northwestern Bell Telephone Company.

Q. How long have you been employed by the telephone company?

A. Thirty-three years.

Q. What position do you now hold?

A. I am assistant to the manager of the Minneapolis division.

Q. Are the files and records of the company with respect to any particular subscriber under your jurisdiction and control?

A. Yes, sir.

Q. Did you bring with you your files and records insofar as they relate to the subscriptions with your company of the Northwestern States Portland Cement Company?

A. Yes, sir.

Q. Do your records disclose that the Northwestern States Portland Cement Company is a subscriber to telephone service in the City of Minneapolis?

A. Yes, sir.

Q. Do your records disclose how long they have been a subscriber?

A. According to our available records, the service was installed on January 4, 1915.

Q. According to your records, has that service been maintained to date?

A. Yes, sir, and it is presently a working service.

Q. Will you explain what you mean?

A. Well, they still have telephone service under the same name, Northwestern States Portland Cement Company.

Q. Was there an address in your records given for the service that was installed in 1915?

A. Well, I haven't the original records here. We tried to find it, but it is not available. It goes back such a considerable distance that we were not able to locate it, but to the best of our knowledge, it has been, for many years at least, located at 1010 Roanoke Building. 1

Q. In Minneapolis?

A. In Minneapolis.

Q. As a matter of fact, do not your records disclose that substantially the same numbers have been maintained by the company?

A. Substantially so. The same telephone number, you mean? 2

Q. Yes.

A. Yes, sir.

Q. As a matter of fact, they are exactly the same.

A. I believe that is correct, sir.

Q. Now, with respect to listing in your Minneapolis Directory, do your records disclose that the Northwestern States Portland Cement Company is listed in your Minneapolis Directory? 3

A. Yes, sir.

Q. Is it listed in what we commonly know as the yellow sheets?

A. Yes, sir.

Q. Will you describe what the yellow sheets are, or what the classified service of your directory is?

A. It is a directory where we list various business classifications for subscribers that have busi-

1 ness telephone service. Basically, together with advertising which we sell, it enhances the value of the telephone service to the business customers.

Q. Now, to be perfectly fair about this, this defendant, Northwestern States Portland Cement Company, is listed, but it does not advertise in that directory?

A. No, sir.

Q. It carries none of this paid advertisement?

A. No, sir.

Q. But it is listed in the yellow section?

2 A. In both the alphabetical and classified sections. The listing is a part of the service in the yellow or classified sections, insofar as the Minneapolis service is concerned, for all business customers.

Q. Now, with respect to listing in the classified directory, what is the policy of your company in determining under what heading the listing should be made?

A. Most businesses fall rather naturally under a given heading, such as, in this case, North-

3 western States Portland Cement Company. Well, we have a classified heading under "cement, wholesalers and manufacturers," and obviously that is where they are and have been listed under that heading in the classified or yellow section of our Minneapolis directory.

Q. You have other listings for cement?

A. Yes, we have other sub-headings under cement.

Q. Would it be obvious to you from the names, that they would belong under wholesalers? 1

A. No, sir, I don't mean it would be that way. It could fall under any given section of cement, but most of our businesses are classified that way.

Q. How do you determine under what subheading or classification, any particular company would be listed?

A. According to whatever the company's wishes are in that regard, because we are in no position to judge as to the kind or character of business they are engaging in. 2

Q. Is it your policy to consult the company?

A. At the time the service is negotiated, yes, sir.

Q. I suppose your records disclose that this listing, both in the alphabetical and classified, has been there for many, many years?

A. I would say since the original installation we have a record of, in January, 1915.

Q. Now, I will ask you whether or not every business telephone, such as was subscribed to by this cement company in Minneapolis, is listed in the Minneapolis directory and is also, as a matter of practice, listed in the St. Paul directory? 3

A. Would you repeat that?

Q. A Minneapolis business telephone subscriber is listed, as a matter of right, without any cost?

A. That's right.

1 Q. And is also listed in the St. Paul telephone book as a matter of right and without extra cost?

A. No, sir.

Q. I will ask you whether or not this company has been listed, according to your records, in the St. Paul telephone book?

A. Yes, they have been.

Q. That is, as to the alphabetical listing. Will you tell me when, as your record discloses, they became listed in the St. Paul book?

A. Well, one listing that we have record
2 of, does not indicate the year in which it was installed, but it would appear to have been in some time prior to 1946.

Q. Now, is that the alphabetical listing?

A. The alphabetical section I am referring to now.

Q. You say your records indicate that was some time prior to 1946?

A. Yes, sir.

Q. Has that service been maintained to date?

A. Yes, sir. Of course, there has been one
3 change. Whether that listing has been taken out now due to this recent change over and our metropolitan service plan where a charge no longer applies to St. Paul or a call from St. Paul to Minneapolis—

Q. That change was in 1954?

A. October 17, 1954, this year.

Q. Does your company make an extra charge for the alphabetical listing of this Minneapolis business telephone in the St. Paul directory?

A. Yes, sir.

Q. Now, with respect to the listing of this company in the St. Paul classified directory, what do your records disclose with respect to that?

A. We have carried an additional listing in the St. Paul directory, in the classified section.

Q. Do your records disclose how long you have carried that listing?

A. Well, we installed one listing in 1944 in the St. Paul directory under the classified heading of "Cement, wholesalers and manufacturers", with a monthly related charge for carrying that listing.

Q. Is that monthly related charge for carrying that listing in the St. Paul classified directory, a different and separate charge from carrying the listing in the St. Paul alphabetical?

A. Yes, it is. One does not presuppose the other. You can have one without the other.

Q. And that service in the classified directory has been maintained up until at least the past year?

A. Yes, sir.

Mr. Abdnor: That is all, thank you, Mr. Leahy.

CROSS EXAMINATION.

By Mr. Maun:

Q. You do not know of your own knowledge whether the defendant in this action is the same company that made the listing back in 1915?

A. No, sir, I would have no direct knowledge of that, sir.

Q. You didn't intend to infer by your testimony that this was the same company?

A. No, I did not. The name has been maintained on a continuous basis.

Q. Do you know anything about the business operations of the defendant here, or the company that may have made the listing in 1915?

A. Nothing whatever.

Q. All you know is that the name appears in your telephone book?

A. And on our records.

Q. And they have a telephone number?

A. Yes, sir.

Q. You don't know who made arrangements for that or anything of that kind?

A. We have no information or knowledge on that point.

Mr. Maun: No further questions.

Mr. Abdnor: Nothing further.

Mr. Abdnor: At this time, your Honor, I would like to offer in evidence the file of the Clerk of this Court bearing number 350,303. It is a matter entitled "Northwestern States Portland Cement Company, a corporation, against Rockvile Lumber Company."

Mr. Maun: No objection to this exhibit.

The Court: Received. You admit, do you, Mr. Maun, that this is the same defendant that is here in the court room?

Mr. Maun: No, we do not. We think it is a West Virginia corporation. This is an Iowa corporation. 1

Mr. Abdnor: If that becomes pertinent, then it will be necessary for me to call adverse witnesses for cross examination to demonstrate the relationship between these two. As a matter of fact, the file here involved relates to the West Virginia Corporation in this proceedings.

Mr. Maun: Of course, we were not going to get into a dispute, but if you want to go into that, it is obvious that Mr. Wilkins is not a representative of the West Virginia Corporation, which went out of business in 1934. 2

The Court: What are you trying to prove by this file?

Mr. Abdnor: This file, your Honor, is offered for the purpose of demonstrating that what appears on the face of this file to be this corporation has resorted to the jurisdiction of the Minnesota courts in enforcement of their claims in Minnesota. Now, it will develop that I have cases which demonstrate that that is one factor—possibly a minor factor, but a factor— 3

The Court: You mean this corporation cannot come into our state and use our courts?

Mr. Abdnor: They have taken into consideration the fact that they have come into this state and used our court in their business. It is stated in there that it is the Northwestern States Portland Cement Company of Mason City, Iowa.

1 Mr. Maun: Well, your Honor, the West Virginia corporation was also at Mason City, Iowa. That is on the return. Their first exhibit shows the first year by the West Virginia corporation—

The Court: Was this same company reorganized from one in West Virginia and one in Iowa?

Mr. Maun: That's right. It is a successor corporation to one that came out of bankruptcy.

The Court: All I know is that it is received in evidence. What it amounts to and who it is, that is up to you gentlemen.

2 (Plaintiff's Exhibits V to Z inclusive, and AA and BB were marked for identification.)

Mr. Abdnor: If your Honor please, I now offer in evidence from the Register of the Clerk of this Court—

The Court: What all does this cover?

Mr. Abdnor: Page 260075. It appears to cover matters identified as 259701 to 260200, and I offer that page in evidence.

The Court: Have you seen it, Mr. Maun?

3 Mr. Maun: Yes, I have seen it.

The Court: Do you have any objection?

Mr. Maun: It appears to be a transfer of a judgment from Freeborn County in 1926, and I am sure it is not this company.

The Court: Just because you have the name of a corporation—in this other case you have something to back it up.

Mr. Abdnor: We will withdraw the offer.

Mr. Maun: If I thought it was the same company I would admit it in evidence.

The Court: Well, there may not be very many Northwestern States Portland Cement Companies operating in this state. I would almost take it on that basis. 1

Mr. Abdnor: It seems to me that your Honor could take it on the basis we have here.

The Court: Suppose you had John Smith transferring judgments around. I wouldn't have to take that. It would have to be a very unusual name, and I don't suppose Northwestern States is a very unusual name.

Mr. Abdnor: I will withdraw that, your Honor. I won't make it any more difficult. I think the one file I have in will suit my purposes. 2

The Court: I will put it down "not offered".

Mr. Abdnor: Yes. I offer in evidence Exhibits marked X, Y, Z, AA and BB. Each of these exhibits constitutes a series of documents relating to the registration of a motor vehicle in the State of Minnesota, and each is certified to be true and correct.

The Court: Have they all got his name signed as district manager, or something like that? 3

Mr. Abdnor: No, sir. On the first one, which is Exhibit X, at one point the application is signed by Mr. Danielson, whom, the Court will recall, was the predecessor of Mr. Wilkins, identified as manager. Also, at another point an application is signed by Mr. Wilkins, identified as district manager. These exhibits relate to one particular automobile through the years. With respect to Ex-

hibit Y, it is signed at one point and identified. At one point it is signed by Mr. Danielson, identified as manager. On Exhibit W again, at one point Mr. Danielson has signed, identified as manager. The other exhibits simply show ownership of automobiles in the State of Minnesota.

The Court: Any objections?

Mr. Maun: No objections.

The Court: Received.

Mr. Abdnor: Mr. Maun, I misstated the identification of these exhibits. They should begin with V, W, X, Y, Z and AA and BB.

The Court: All right, they are received.

Mr. Abdnor: Plaintiff rests.

GILBERT BENTON PRAY,

recalled:

DIRECT EXAMINATION.

By Mr. Maun:

Q. You were sales manager during the time Mr. Danielson and Mr. Wilkins worked for the company?

A. That's right.

Q. Were Mr. Danielson or Mr. Wilkins ever given the title as manager, or Twin Cities manager, or regional manager?

A. Well, not in that manner. They were considered as district representatives.

Q. What district?

A. Minnesota, Minneapolis and St. Paul.

Q. Well, you said Minnesota, Minneapolis and St. Paul. Which one did you mean?

A. Minneapolis and St. Paul.

Mr. Maun: No further questions.

Mr. Abdnor: I have nothing.

Mr. Maun: Defendant rests.

Mr. Abdnor: I would like to make a statement for the record. In tax cases of this kind, the State of Minnesota seeks no more and no less than that required by the applicable statute, and if the Court needs any help we will be glad to give any assistance we can with respect to the computations, of course, subject to the approval of the attorney for the defendant in this case.

The Court: I don't know what you mean by that.

Mr. Abdnor: The State wants nothing more than the amount required by the statute. Now, if the Court should find that the State has a right to some tax, but not all the tax—

The Court: How could I find anything different than what is in those figures? You mean if I decide against the company but open it up for that purpose?

Mr. Maun: I agree that if you decide against the company it would be for the figures in the record. Now, your Honor, in a case of this kind I suggest that we be permitted to obtain a transcript and brief the case, and if the Court desires oral argument, either before or after, we would be glad to do that, although I, personally, prefer to have a transcript before we make the argument.

The Court: I agree with Mr. Maun on that. This case is too important to try to do anything until we have had a chance to study the law. There may be some disputed facts in this case which will have to be decided.

Mr. Abdnor: Not to any great extent, but there are some.

The Court: You claim a different rule applies?

Mr. Abdnor: We are not claiming we are bound by the test of whether or not they are doing business in this state. Whether or not they are, we still say we are entitled to a tax.

The Court: But you claim the test is not the same?

Mr. Abdnor: I claim the test as to doing business is not decisive.

Mr. Maun: I would like to have a transcript before I brief the case.

The Court: All right, I will read the briefs, and you can have 30 days after you get the record.

(Title of Cause.)

STIPULATION.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the official court reporter's transcript of the testimony herein consisting of 162 typewritten pages, together with all the exhibits referred in said transcript may be taken as conforming to

the truth and containing all the evidence offered or introduced upon the trial of this cause, all objections, rulings, orders and all other proceedings of such trial (exclusive of the pleadings and other papers properly filed with the Clerk of Court), and that the Court may make an Order herein, upon the motion of either of the parties hereto without notice to the other party, settling and allowing said transcript and exhibits as the settled case herein.

Dated this 12th day of September, 1955.

MILES LORD,
Attorney General,
GEORGE R. JOHNSON,
Assistant Attorney General,
209 State Office Building,
Saint Paul 1, Minnesota,
Attorneys for Plaintiff.

JOSEPH A. MAUN and
WILLIAM R. BUSCH,
BUNDLIE, KELLEY and MAUN,
425 Hamm Building,
Saint Paul 2, Minnesota,
Attorneys for Defendant.

(Title of Cause.)

ORDER SETTLING CASE.

Upon the stipulation of the parties hereto and the Court being fully advised in the premises,

It is hereby ordered that the official court re-

porter's transcript herein consisting of 162 typewritten pages, together with the exhibits referred to therein, may be and the same are hereby settled and allowed as the settled case herein.

Dated at Chambers in Minneapolis, Minnesota, this 14th day of September, 1955.

PAUL S. CARROLL,
Judge of District Court.

(Title of Cause.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT.

The above entitled action, being on the General Term Calendar of this Court, came duly on for hearing before the undersigned on November 8 and 9, 1954, without a jury, Joseph S. Abdnor, Esq., then Assistant Attorney General, appearing on behalf of the plaintiff at the trial, and Miles Lord, Esq., Attorney General and George R. Johnson, Esq., Assistant Attorney General, appearing on behalf of plaintiff on argument and briefs, and Bundlie, Kelley & Maun by Joseph Maun, Esq., appearing on behalf of defendant on all occasions.

On the trial of this cause the parties adduced evidence in support of their respective contentions, from which the Court hereby makes and files the following

Findings of Fact. 1

I.

That at all times material hereto the defendant, the correct corporate name of which is Northwestern States Portland Cement Company, was a corporation organized and existing under and by virtue of the laws of the State of Iowa, with principal offices and place of business in Mason City, Iowa.

II.

That at all times material hereto the defendant operated on a fiscal year basis with its fiscal year ending on November 30th. 2

III.

That the defendant is not now and was not during the years material hereto authorized under the applicable statutes of the State of Minnesota to transact business in this state and the defendant filed no income tax returns with the Commissioner of Taxation of the State of Minnesota for any of its taxable years here involved. 3

IV.

The plaintiff, acting through the Commissioner of Taxation of the State of Minnesota, prepared on the basis of information available to the said Commissioner of Taxation income tax returns for the defendant for its fiscal years 1933 through 1948, inclusive, and assessed against the defendant the income taxes shown to be due

by said returns. In the preparation of such returns, the Commissioner used the three-factor formula described in Minnesota Statutes 1953, 290.19, in determining the portion of the defendant's overall net income for each of its fiscal years here involved which was to be allocated to Minnesota and subjected to the income tax imposed by this state. The three factors utilized in this formula are (1) the ratio of the taxpayer's sales assignable to Minnesota during the year to its total sales for the year wherever made, (2) the ratio of the taxpayer's total tangible property in Minnesota for the year to its total tangible property used in the business that year wherever situated, and (3) the ratio of the taxpayer's total payroll in Minnesota for the year to its total payroll for its entire business that year. The income taxes, penalties and interest assessed against the defendant for its fiscal years ended in 1933 through 1948 and herein sought to be collected are as follows:

Fiscal Year Ended November 30	Taxes	Penalty	Interest to 12/1/53
1933	806.48	40.32	512.70
1934	2,530.92	126.55	1,997.18
1935	1,734.29	86.71	1,296.05
1936	4,240.29	212.01	2,990.27
1937	4,875.78	243.79	3,234.24
1938	4,510.41	225.52	3,241.12
1939	6,215.48	310.77	3,600.17
1940	4,992.95	249.65	2,682.68
1941	7,543.57	377.18	3,734.07
1942	3,277.92	163.90	1,634.25
1943	10.14	.51	4.31
1944	2,496.32	124.80	920.89
1945	3,462.01	173.10	1,132.90
1946	8,035.85	401.79	2,292.32
1947	4,114.51	205.73	1,000.81
1948	8,370.53	418.53	1,684.55

V.

That during the years material hereto defendant was engaged in the manufacture and sale of cement. Its home office and plant were located in Mason City, Iowa. It maintained a sales office in the Roanoke Building, Minneapolis, Minnesota, which was operated under a lease paid for from the defendant's home office in Mason City, Iowa. The defendant owned no real estate in Minnesota but did own personal property in this State consisting of office furniture and fixtures, supplies, good will advertising and other material located in its Minneapolis sales office. The office consisted of three rooms and the personal property consisted of three desks, two filing cabinets, a typewriter and some chairs. In addition, the automobiles used by the defendant's salesmen were owned by the company and were located, of course, in the State of Minnesota.

VI.

That during the years material hereto defendant had at the most no more than six employees residing in the State of Minnesota. Two salesmen and a secretary were the employees of the defendant operating out of its Minneapolis sales office. The other employees of the defendant in this state operated directly out of their homes. All were residents of Minnesota. All Minnesota employees of the defendant were hired by supervisory personnel from the defendant's

home office in Mason City, Iowa. No employee of the defendant in the State of Minnesota had at any time any authority to hire or fire any other employee.

VII.

The personal property of the defendant located in the State of Minnesota during the years here involved was paid for out of defendant's home office in Mason City, Iowa. Most of the supplies used in Minnesota by the defendant were obtained from the Mason City office. The defendant's employees in the Minneapolis office did have authority to purchase supplies, such as stamps, etc. That defendant did not maintain a bank account in Minnesota and no petty cash fund was maintained in this state. The salaries of the Minnesota employees were fixed by the Mason City office and paid directly from defendant's home office in Iowa. The defendant's Minnesota salesmen were reimbursed directly from the Mason City office for customer entertainment expense incurred by them. The defendant's employees were on a straight salary basis and vacation policies were established by the home office at Mason City. The territories of the defendant's salesmen in Minnesota were allocated by the home office and the Minnesota employees did not have authority to reallocate the territories among themselves. The defendant maintained two telephone lines in its Minneapolis

office and was listed in both the classified and alphabetical sections of the Minneapolis telephone directory. All telephone bills were paid directly by defendant's Mason City home office. The office was also listed in the Minneapolis city directory. 1

VIII.

That the defendant's employee Wilkins held himself out as and was in fact, the defendant's district manager. That Wilkins was in charge of the Minneapolis sales office. That the defendant's employee Wilkins was listed in the telephone directory and in the city directory as district manager and that applications for automobile license plates were signed by the employee Wilkins as defendant's district manager. That on occasion defendant's employees in Minnesota purchased automobiles and Wilkins purchased two automobiles. Such purchases were on bids approved by the home office. 2

IX.

That during the years here involved the Minneapolis sales office of the defendant and was used to some extent as a central office for the Minnesota salesmen and Minnesota customers. That this office was a clearing house for orders that customers telephoned or sent in to this office. It was an office where complaints might be made or inquiries directed. This office was available to the out-state salesmen when they were in Min- 3

neapolis, that is, a place where they might use the telephone or do their work. Also available in this office were advertising supplies such as pencils, pads and blotters for customers.

X.

The orders received by the defendant's salesmen in the State of Minnesota were transmitted daily to defendant's home office in Iowa where they were approved by the home office. The orders received by defendant from its Minnesota salesmen were acknowledged by it from its home office in Mason City directly to the customers and copies were sent to the salesmen, or if the orders came from the Minneapolis district, copies were sent directly to the Minneapolis sales office, even though such orders came in by telephone or mail. The Minnesota salesmen did not have authority to accept a customer's order or to approve a customer's credit. Credit extensions and collections were handled by the defendant's home office in Mason City. Claims for loss or damage were generally handled through the home office but it was not uncommon for a salesman to handle the adjustment of claims with customers although final approval of the adjustment was necessary from Mason City. Its activities in this state were an integral part of its interstate activities, and all revenue received by it from customers in Minnesota resulted from its operations in interstate commerce.

XI.

That the defendant was engaged in selling and delivering cement to Minnesota customers for at least thirty years prior to the commencement of the action here involved. That 48% of defendant's entire sales were made to customers within the State of Minnesota. That the price of defendant's product was the delivered price to the customer. That the defendant endeavored to keep the base price and freight rates separate but in all cases the purchaser paid the price of the product delivered to his place of business and that it was impossible to purchase cement from the defendant except at a delivered price or to pick up defendant's products at defendant's plant or office in Iowa.

XII.

That during the years in question defendant's merchandise was invoiced and shipped by rail from the defendant's home office at Mason City directly to the purchaser. The defendant's purchasers were located in Iowa, Minnesota, Nebraska, North Dakota, South Dakota and Wisconsin. The defendant did not maintain any warehouse for storing its merchandise in the State of Minnesota and no merchandise was stored or kept by it in this state. Price quotations were prepared and sent out from defendant's home office in Mason City and changes in price were prepared by that office. That by reason of the defendant's location,

it enjoyed a definite competitive advantage over Minnesota cement companies by reason of the favorable freight rates to the defendant by reason of the fact that it was in closer proximity to southern Minnesota customers than such customers were to Minnesota cement producers.

XIII.

That defendant's activities in Minnesota consisted of a regular and systematic course of solicitation of orders for the purchase of merchandise, such orders being subject to acceptance, filling and delivery by the defendant from its home office in Mason City, Iowa. That the function of the Minneapolis sales office and all of its employees in addition to soliciting orders for merchandise consisted of a regular and systematic method of contacting potential customers and users of cement products, the promotion and building of good will, the entertainment of customers and the doing of all things necessary to maintain and enlarge the volume of business done by the defendant in the State of Minnesota. Large quantities of defendant's cement products were used for the building of state local highways and such orders sometimes called for forty to fifty thousand barrels of cement and in addition the employees of defendant were required to contact builders, contractors and architects and any other potential user of defendant's products.

XIV.

The defendant's employees in Minnesota, with the exception of the secretary in the Minneapolis office, were all salesmen. That it was their job to sell defendant's products and build good will for the defendant. That defendant would sell only to eligible dealers which are lumber and building material supply dealers, contractors and ready mix companies. That defendant maintained a list of all eligible Minnesota customers in its Iowa office and no matter how an order came into the home office, the company would not sell unless the order had come in from an eligible purchaser. The defendant's salesmen were provided with lists of all eligible purchasers in their territory and were required as a part of their job to call on every potential customer as often as possible. Salesmen in outstate territories call on a customer on an average of every three weeks and in the Twin City district, customers were called on much more frequently.

XV.

That because of the substantial volume of business carried on in Minnesota, there was a steady and continuous flow of defendant's products into the State of Minnesota at all times. That the defendant has maintained its Minneapolis sales office for many years. That defendant's activities in Minnesota are regular, systematic and well

1 organized for the purpose of selling defendant's products.

XVI.

That the defendant predecessor corporation has resorted to the Courts of the State of Minnesota to enforce its contracts on one occasion.

Conclusions of Law.

I.

That this Court does have jurisdiction over the
2 defendant in this action.

II.

That the defendant's employee Wilkins was a proper person on whom to make service of process and, therefore, the service of process was valid to subject the defendant to jurisdiction.

III.

That the assessments against the defendant by
3 the State of Minnesota and the income taxes, penalties and interest which the plaintiff here seeks to collect from the defendant does not contravene the due process clause of either the Fourteenth Amendment of the Federal Constitution or Article I, Section 7, of the Constitution of the State of Minnesota.

IV.

That the assessments against the defendant of the income taxes, penalties and interest which the

State of Minnesota is here seeking to collect from the defendant is not in conflict with or in violation of the Commerce Clause, Article I, Section 8, Clause 3, of the Constitution of the United States. 1

V.

That the plaintiff is entitled to recovery against the defendant as prayed for in the complaint.

Let judgment be entered accordingly by the Court.

Dated at Minneapolis, Minnesota, this 31st day of August, 1955. 2

PAUL S. CARROLL,
Judge of District Court.

Stay 60 days.

Memorandum

This is a tax case involving the principle of the Drummer cases. The tax itself, passed by the Minnesota Legislature, is Sec. 290.03, M. S. A. I quote the pertinent portion: "An annual tax for each taxable year computed at the rates and in the manner hereinafter provided is hereby imposed upon the taxpayer's net income for such year of the following classes of taxpayers: 1. Domestic and foreign corporations not taxable under Sec. 290.02 which own property within this state or whose business with the state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both." 3

1 Obviously this tax is a tax upon the net income of a foreign corporation whose business is exclusively that of foreign commerce or interstate commerce or both. It is definitely not a tax on the franchise of the corporation to do either a local business or an interstate business. Considerable care has been taken in preparing the Findings of Fact because in cases of this kind it often happens that much depends upon the exact Findings of the trial Court. I have tried to cover with a Finding every disputed, or otherwise, question
2 of fact that arose under the testimony.

Defendant claims the tax is unenforceable because Minnesota exceeded her power and denied defendant certain rights under both the Federal and state constitutions. So far as the Federal constitutional questions are concerned, the ultimate authority rests in the decisions of the United States Supreme Court. (See 240 Minn., 71 at page 81.) All the cases, even of the Supreme Court, cannot be reconciled, and to some extent the best one can do in our position is to follow
3 the latest decision. This the Court intends to do. In The Constitution of the United States of America, Revised and Annotated 1952, at page 179 and following there is a discussion of the type of case in question. On page 179 the author quotes from Freeman v. Hewit, 329 U. S. 249, a decision in 1946 by Justice Frankfurter: "The power of the states to tax and the limitations upon that power imposed by the Commerce Clause

have necessitated a long, continuous process of judicial adjustment. The need of such adjustment is inherent in a Federal Government like ours where the same transaction has aspects that may concern the interests and involve the authority of both the central government and the constituent states. The history of this problem is spread over hundreds of volumes of our reports. To attempt to harmonize all that has been said in the past would neither clarify what has gone before nor guide the future. Suffice it to say that especially in this field opinions must be read in the setting of the particular cases and as a product of preoccupation with their special paths." 1 2

This Court will now consider the claimed defenses in their respective order: 1. Defendant contends that service in this case, which was made on Mr. William R. Wilkins, did not comply with Minnesota Statutes, Sec. 543.08. Wilkins was something more than just a salesman. He called himself the defendant's district manager. That, in itself, did not mean much. But the Court feels that service on him under the circumstances was safe enough to protect the fundamental rights of notice, and so forth, of the defendant. At the oral argument defendant's counsel withdrew this issue, and therefore nothing more need be said about it now. 3

Second, defendant contends that it is not amenable to our courts because it was "not in our state", and, therefore, jurisdiction could not be

obtained, it being a non-resident corporation. This issue involves the question raised in so many cases of a non-resident corporation doing business in another state. Defendant cites the 14th Amendment of the Federal Constitution, and Article I, Section 7 in the Minnesota Constitution. The facts are set out in detail in the Findings. They are sufficient to constitute presence for the purposes of jurisdiction. Forty-eight per cent of defendant's business is done in Minnesota. It was done by regular and systematic solicitation of orders. (In connection with this, as stated by Justice Jackson in Miller Bros. v. Maryland, 347 U. S. 340, "Probably except for credit reasons, acceptance was a mere formality, since one hardly incurs the cost of soliciting orders to reject.") As stated in International Shoe Company v. Washington, 326 U. S. 310 (1945), "If the defendant be not within the territory of the forum, he have certain minimum contacts with it so that the maintenance of the lawsuit does not offend traditional notions of fair and substantial justice." Facts which are pertinent to this issue are set out in the Findings, from all of which one reaches the conclusion that Minnesota did have jurisdiction insofar as the 14th Amendment is concerned. Authorities for this result are found in the following cases: 230 Minn. 217; 240 Minn. 71 and particularly a discussion starting on page 80 and continuing to page 87; International Shoe Co. v. Washington, 326 U. S. 310; Nippert v. City of Richmond, 327

U. S. 416; Jurisdictions over Foreign Corporations, 34 Calif. Law Review 331; see also the following: 347 U. S. 340, the 1953 case of Miller Bros. v. Maryland; Alpha Portland Cement, 268 U. S. 203, which, incidentally, is cited later in the Spector case. 1

The third ground raised by defendant is in substance simply this; that Minnesota is attempting to tax on something over which it has no jurisdiction. This is a question of jurisdiction of the thing as distinguished from jurisdiction of the person as raised in point No. 2. An attempt to place a tax on something over which the state has no jurisdiction is a violation of due process and the 14th Amendment and its comparable section in the Minnesota Constitution. This is a tax on net income arising out of business done by the corporation in Minnesota. The levy is fairly proportioned and non-discriminatory. There is no claim that the tax placed an undue or unfair burden on interstate commerce. It is not a tax for use of the highways, nor collected in lieu of ad valorem or property taxes. It is not a fee for inspection, or sales tax. As said in many cases, whether a state may make interstate commerce pay its way depends upon the constitutional channels through which it attempts to go. See Memphis National Gas Co. v. Beeler, 315 U. S. 649, decided in 1942. See also 276 U. S. 245. 2 3

The United States Supreme Court has said in Ott v. Mississippi Barge Line Co. 336 U. S. 169

(1949) with reference to this due process question that a proper test is: Does the tax have any relation to opportunity, benefits, or protection conveyed or afforded by the taxing state? Of course this tax directly relates to the opportunity, benefits and protection conveyed by the State of Minnesota. Minnesota provides a civilized and lawful community into which foreign corporations may come and do business. Courts and police must be maintained, highways kept in repair, and roads built over and under the railroads which haul the defendant's products. The fact that the tax relates to benefits does not alone meet the requirement of due process. A proper apportionment formula is also required. There must be a reasonable reflection of the value of business done in the taxing state. This tax law so provides. Similar taxes have been upheld as against due process. See 329 U. S. 416; 315 U. S. 501; 308 U. S. 331.

If this tax does not violate the Commerce Clause it seems to this Court that Minnesota did have jurisdiction to levy this tax, and it is valid. There are trends in the decisions which make it difficult to be certain what an Appellate Court would do. I base my decision on the following cases: Wisconsin v. Penny Co., 311 U. S. 435 (1940); also 311 U. S. 452; and 303 U. S. 77; Memphis v. The National Gas Co., 335 U. S. 80 (1947); and Memphis National Gas v. Beeler, 315 U. S. 649 and those heretofore cited. On

the basis of these and many other cases I conclude 1
that insofar as due process is concerned, aside from the remaining problem of the Commerce Clause, the tax is valid.

The fourth and last point raised by the defendant is that this law violates the Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3. The claim is that this tax is upon a corporation engaged exclusively in interstate commerce and that it is on the defendant's privilege of engaging in interstate commerce in the State of Minnesota, and that therefore it con- 2
stitutes an unreasonable, unlawful and oppressive burden on interstate commerce. There is no question but what the right or privilege of engaging in interstate commerce as such cannot be taxed by a state. See Spector Motor Service supra. It is also true that interstate commerce is, now at least, required to carry its fair share of the burden of taxation in the particular state where it operates. Again, whether a state may validly make interstate commerce pay its way depends, first 3
of all, on the constitutional channel through which it attempts to go. Therefore, the question is, did Minnesota in creating this tax provide a constitutional channel, or did it go through a route which was not constitutional. More particularly, it seems to me, the real issue in this case is whether a tax on a foreign corporation doing a substantial portion of its business in interstate commerce can be levied against the net in-

come of that corporation arising out of business done in the particular state levying the tax. The defendant relies very heavily on the comparatively recent case (1950) of Spector Motor Service Co. v. O'Connor, 340 U. S. 602, and also the older cases cited in the Spector case, to-wit, Alpha Portland Cement v. Massachusetts, 268 U. S. 203, and Cheney Bros. Co. v. Massachusetts, 246 U. S. 147. The State claims that these cases are all cases where the tax is upon the franchise of the foreign corporation but measured in some way by the income of the particular corporation, and the State attempts to draw a distinction between such cases and those where the State levys a non-discriminatory income tax on a foreign corporation, at least on that portion of the business which is done with Minnesota residents. These cases, and particularly the Spector case, hold that the tax is a direct tax on the right of these defendants to carry on an interstate commerce business, and therefore illegal. They do not hold that a fairly apportioned tax on the net income of a corporation doing an interstate business is unconstitutional. The first sentence of the headnote of the Spector case reads as follows: "Connecticut imposes upon the franchises of foreign corporations for the privilege of doing business within the state a tax computed at a non-discriminatory rate on that part of the corporation's net income which is reasonably attributable to its business activities in the state." It will be noted

that the tax is upon the franchise or the right to 1
do business, interstate business, and that is something that no state can do. I have not been able to find any case where a non-discriminatory income tax has been held to constitute a violation of the Commerce Clause, nor on the other side of the question have I found one that specifically held that it was not, at least no holding where it was absolutely necessary to a decision in the case. There are several cases where strong statements are made indication that that is the law. The West Publishing Company decision, 27 Calif. 2nd 705, 2
does definitely draw the distinction between a direct tax on the right to do interstate commerce business but payable from a percentage of net income, and a fairly apportioned tax on net income. The California Court did not have to go as far as it did to sustain the tax. The decision was affirmed by the United States Supreme Court in a very short opinion. It can be assumed that it affirmed and approved the result, but to what extent it agreed with the language of that decision I would not know. In Memphis National Gas 3
Co. v. Beeler, 315 U. S. 649, and particularly at page 656, the Court said this: "In any case, even if taxpayer's business were wholly interstate commerce, a non-discriminatory tax by Tennessee on the net income of the foreign corporation having a commercial domicile there or upon net income derived from within the state is not prohibited by the Commerce Clause on which alone the tax-

payer relies." This certainly is strong language favoring the State's position. I do not think it was necessary to a decision in this case, and how binding it is I would not know.

The case of Schaffer v. Carter, 252 U. S. 37, and particularly at page 57, certainly uses language that is almost in point on this question favorable to the State. If I correctly read the dissenting opinion of Judge Learned Hand in Spector Motor Service v. Walsh, 139 Fed. 2d 809 at page 822, he affirms the distinction between a direct tax on the right to do interstate business and a tax on some contributing activity. "It seems to me clear that we are therefore not yet justified in supposing that the distinction between an excise upon a Federal activity and an excise upon some contributing activity has ceased to exist." On the other hand, the language of Judge Clark in the main opinion would indicate that unless the Supreme Court changed its position (which it did not), "the tax in the case at bar would be illegal." See page 814. Attention is called to the fact that the Spector case has caused considerable doubt in this field of law, see The Constitution of the United States of America, Revised and Annotated, 1952, at page 209.

The case of United States Glue Co. v. Oak Creek, 247 U. S. 321, holds that the domestic state of a corporation may levy a tax on income of that corporation and include in it income derived from its exclusively interstate business. Now

if this is not a violation of the Commerce Clause —if the local state of the corporation can tax all the income of one of its own corporations, whether derived from interstate commerce or otherwise, then why might not some other state where business was actually done by this corporation in interstate commerce have the same right at least to tax the income from such business derived in and from that particular state. One could be just as much a burden on interstate commerce as the other. Neither is a tax on the franchise itself. See pages 326 and 327 of United States Glue Co. v. Oak Creek supra. I also feel that the case of Postal Telegraph Cable Co. v. Adams, 155 U. S. 688, at particularly pages 695 and 696, furnishes strong support for the State's position. 1 2

This Court has been aided greatly by the written briefs and the oral arguments of both of the attorneys. I have not attempted, by any means, to cite all the cases that this Court has read or that have been cited to the Court. It seems to me, without relying on any particular theory, that the weight of the law, all things considered, favors the holding of constitutionality so far as this [tas] statute is concerned. It is regrettable that this matter has not been settled long, long before this. 3

Let this memorandum be made a part of the foregoing decision in this case.

P. S. C., Judge.

1 (Title of Cause.)

MOTION FOR AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT.

The defendant respectfully moves the Court, for the reasons and on the grounds hereinafter stated, to amend its Findings of Fact, Conclusions of Law and Order for Judgment, entered herein under date of August 31, 1955, in the following particulars:

2

I.

Amend the first two sentences of Finding VIII so that they read as follows:

"That the defendant's employee Wilkins held himself out as defendant's district manager, that Wilkins did this without authority and was at all times material herein employed by defendant only in the capacity of an ordinary salesman."

3 The evidence is clear that Wilkins was nothing more than a salesman and that he was without authority in listing himself as district manager (Tr. 111, 135, 139, 160).

II.

Amend Finding IX so that it reads as follows:

"That during the years here involved the Minneapolis sales office of the defendant was used by defendant's Twin City area

salesmen and its stenographer. This office received and transmitted to defendant's home office in Mason City, Iowa, for acceptance or rejection orders that customers telephoned or mailed in. Small quantities of advertising supplies such as pencils, pads and blotters were available in this office for distribution to customers." 1

The Court's Findings IX, as it now reads, states that the Minneapolis sales office of defendant was used as a central office for defendant's Minnesota salesmen and its Minnesota customers. The testimony, however, is clear that only the Twin City area salesmen of the defendant used this office and that the defendant's other salesmen reported directly to the home office in Mason City (e.g., see Tr. 65). 2

In the Court's Finding IX it is further stated that complaints "might" be made to the Minneapolis office or inquiries directed there. This is contrary to the evidence which clearly reflects the fact that all adjustments for claims or complaints were handled by the home office at Mason City, Iowa, and that defendant's Minnesota employees had no authority to make any adjustments of any kind (see Tr. 54). 3

The Court's Finding IX, as it now reads, also states that the Minneapolis office was available to the out-of-state salesmen when they were in Minneapolis. Nothing, however, is found in either the transcript or the documentary evidence to support this finding.

1 III.

Amend the second to the last sentence of the Court's Finding X so that it reads as follows:

> "Claims for loss or damage were handled through defendant's home office in Iowa and defendant's Minnesota salesmen had no authority to handle or adjust claims of customers."

The Court's Finding X now states that claims for loss or damage were "generally" handled
2 through the home office but that it was not uncommon for salesmen to handle the adjustment of customer claims subject to final approval of the home office. This is contrary to the evidence which clearly reflects the fact that the adjustment of claims was the exclusive responsibility of defendant's home office in Iowa and that defendant's Minnesota employees has nothing whatsoever to do with this activity (see Tr. 54).

IV.

3 Amend Finding XI so that the first sentence thereof reads as follows:

> "That the defendant was engaged in selling and delivering cement in the State of Iowa to Minnesota customers for at least thirty years prior to the commencement of the action here involved."

The requested amendment is necessary to avoid the erroneous implication that defendant

was engaged in selling and delivering merchandise in Minnesota. The evidence is clear that all sales and deliveries made by defendant occurred at its home office in Mason City, Iowa. 1

V.

Amend Finding XV so that the last sentence thereof reads as follows:

> "That defendant's activities in Minnesota were organized and carried on solely for the purpose of drumming up business by the solicitation of orders which were subject to acceptance by defendant at its home office in Mason City, Iowa." 2

This amendment is necessary to conform the finding to the evidence.

VI.

Amend the Conclusions of Law and Order for Judgment so that they read as set forth in the proposed Conclusions of Law and Order for Judgment submitted by the defendant to the Court under date of July 15, 1955. The reasons for this amendment are as set forth in the Memorandum submitted for the Court's use with the aforesaid proposed Conclusions of Law. 3

The foregoing motion will be made upon all the files, records and proceeding herein and such motion is for the purpose of having the Court's Findings of Fact and Conclusions of Law

1 amended to conform with the evidence before the Court.

Respectfully submitted,
JOSEPH A. MAUN,
WILLIAM R. BUSCH,
425 Hamm Building,
Saint Paul 2, Minnesota,
Attorneys for Defendant.

Of Counsel:
BUNDLIE, KELLEY and MAUN,
2 425 Hamm Building,
Saint Paul 2, Minnesota,
SMITH & BECK,
505-509 First National Bank Building,
Mason City, Iowa.

(Title of Cause.)

ORDER FOR AMENDED FINDINGS OF FACT.

3 The defendant in the above entitled action having moved this Court for amended Findings of Fact, Conclusions of Law and Order for Judgment, the matter was placed on the special calendar and came duly on for hearing before this Court in chambers on October 3, 1955, at 10:00 a.m., Bundlie, Kelley & Maun by William R. Busch, Esq., appearing on behalf of the defendant, and Miles Lord, Esq., Attorney General, by George R. Johnson, Esq., Assistant Attorney General, appearing on behalf of the plaintiff.

The Court having heard the arguments of counsel and being apprised in the premises, the Motion is hereby in all respects denied except as hereinafter ordered. 1

It is hereby ordered that the Findings of Fact in the above entitled matter be amended to read as follows:

VIII.

That the defendant's employee Wilkins held himself out as the defendant's district manager and the company had knowledge of this fact. That Wilkins was in charge of the Minneapolis sales office. That the defendant's employee Wilkins was listed in the telephone directory and in the city directory as district manager and that applications for automobile license plates were signed by the employee Wilkins as defendant's district manager. That on occasion defendant's employees in Minnesota purchased automobiles and Wilkins purchased two automobiles. Such purchases were on bids approved by the home office. 2 3

IX.

That during the years here involved the Minneapolis sales office of the defendant was used to some extent as a central office for the Minnesota salesmen and Minnesota customers. That this office was a clearing house for orders that customers telephoned or sent in to this office. It was an office where complaints might be made or inquiries directed. This office was available to the

1 defendant's other Minnesota salesmen when they were in Minneapolis, that is, a place where they might use the telephone or do their work. Also available in this office were advertising supplies such as pencils, pads and blotters for customers.

X.

The orders received by the defendant's salesmen in the State of Minnesota were transmitted daily to defendant's home office in Iowa where they were approved by the home office. The or-
2 ders received by defendant from its Minnesota salesmen were acknowledged by it from its home office in Mason City directly to the customers and copies were sent to the salesmen, or if the orders came from the Minneapolis district, copies were sent directly to the Minneapolis sales office, even though such orders came in by telephone or mail. The Minnesota salesmen did not have authority to accept a customer's order or to approve a customer's credit. Credit exten-
3 sions and collections were handled by the defendant's home office in Mason City. Claims for loss or damage were generally handled through the home office. But it was not uncommon for customers to present their claims to the salesman who writes the company informing it of the trouble and requesting the company what they wish to do about it. Its activities in this state were an integral part of its interstate activities, and all revenue received by it from customers in Minne-

sota resulted from its operations in interstate commerce. 1

Dated at Minneapolis, Minnesota, this 11th day of October, 1955.

Stay 20 days.

PAUL S. CARROLL,
Judge of District Court.

(Title of Cause.)

AMENDED FINDINGS OF FACTS, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT. 2

* * *

The Amended Findings of Fact, the Conclusions of Law, and the Order for Judgment contained herein are hereby filed in lieu of the Findings of Fact, Conclusions of Law and Order for Judgment dated the 31st day of August, 1955.

Let judgment be entered accordingly by the Court. 3

Dated at Minneapolis, Minnesota, this 11 day of October, 1955.

PAUL S. CARROLL,
Judge of District Court.

Stay of 20 days.

1 (Title of Cause.)

JUDGMENT.

The above entitled action, having been regularly placed upon the calendar of the above named Court, came on for trial before the Court, without a jury, on November 8, 1954. Joseph S. Abdnor, Esq., then Assistant Attorney General, appeared on behalf of the plaintiff at the trial, and Miles Lord, Esq., Attorney General, and George R. Johnson, Esq., Assistant Attor-
2 ney General, appeared on behalf of the plaintiff on argument and briefs, and Bundlie, Kelley & Maun by Joseph Maun, Esq., appeared on behalf of defendant on all occasions. The Court, after hearing the evidence adduced at the trial and having been fully advised in the premises, did on the 11th day of October, 1955, duly make and file its Findings of Fact, Conclusions of Law and Order for Judgment therein.

Now, therefore, pursuant to said order and on motion of George R. Johnson, attorney for the
3 plaintiff, Judgment is hereby entered in favor of the plaintiff and against the defendant in the amount of $102,536.82 with interest at the rate of 4% per annum on the sum of $70,578.31 from December 1, 1953.

Dated this 4th day of November, 1955.

By the Court,

PHILIP C. SCHMIDT,
Clerk of District Court.

(Title of Cause.)

NOTICE OF APPEAL.

To Miles Lord, Attorney General and George R. Johnson, Assistant Attorney General, State Office Building, Saint Paul, Minnesota, attorneys for plaintiff, and Philip C. Schmidt, Esq., Clerk of the above Court:

Please take notice that Northwestern States Portland Cement Company, a corporation, appeals to the Supreme Court of the State of Minnesota from the judgment of the above Court, and from the whole thereof, dated and entered on November 4th, 1955, in favor of plaintiff and against defendant, in the amount of One Hundred Two Thousand Five Hundred Thirty-six and 82/100 Dollars ($102,536.82) with interest at the rate of four per cent (4%) per annum on the sum of Seventy Thousand Five Hundred Seventy-eight and 31/100 Dollars ($70,578.31) from December 1, 1953.

Dated this 9th day of November, 1955.

JOSEPH A. MAUN.
WILLIAM R. BUSCH.

Of Counsel:
BUNDLIE, KELLEY and MAUN,
Attorneys for Defendant,
425 Hamm Building,
Saint Paul 2, Minnesota.

Associate Counsel:
SMITH & BECK,
505-509 First National Bank Building,
Mason City, Iowa.

Due and personal service of the within Notice of Appeal is hereby admitted this 21st day of November, 1955.

s/ GEORGE R. JOHNSON,
Attorney for Appellee.

Due and personal service of the within Notice of Appeal is hereby admitted this 22nd day of November, 1955.

*s/*PHILIP C. SCHMIDT,
Clerk of District Court.

[fol. 221] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF MINNESOTA

No. 89 Hennepin County

Matson, J.
Dissenting, Frank T. Gallagher, J., Nelson, J.

STATE OF MINNESOTA, Respondent,

36826 v.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY, Appellant.

SYLLABUS

1. Jurisdictional presence of a foreign corporation is established only if the activities carried on within the forum are of such a quality and nature that it can be said that the foreign corporation has, as a matter of due process, established contacts, ties, or relations within the forum which give rise to privileges and obligations which reasonably obligate it to respond to any suit brought within the forum.

2. Regular and systematic solicitation of business within the state—which results in a continuous flow of the foreign corporation's products into the state through the channels of interstate commerce—when corroborated by other jurisdictionally significant acts or manifestations within the forum, establishes jurisdictional presence in compliance with the requirements of due process.

3. A nondiscriminatory state tax upon the net income of a foreign corporation engaged *solely* in interstate business, which is fairly apportioned to and measured by that part of the net income which is derived from business done within the state, contravenes neither the due process clause nor the commerce clause, *where the incidence or subject of*

the tax is not the privilege of either engaging in, or continuing to engage in, interstate commerce, but is instead those income-producing activities and transactions which, though indirectly related to interstate commerce, have become separated from the flow of that commerce and have become so localized within the state as to compete with, and enjoy the benefits and advantages of, a local business, and which [fol. 222] as localized commerce ought to pay their own way and not place other local business at a competitive disadvantage.

4. The tax imposed under M. S. A. 290.03 not only complies with the requirements of due process but is also not in contravention of the commerce clause since it does not impose a burden upon, or discriminate against, interstate commerce.

5. The annual tax imposed by §290.03 *upon the taxable net income* is not an excise or privilege tax measured by net income, but purely a net-income tax wholly unrelated to the privilege of engaging in interstate commerce.

6. A net-income tax, *the nonpayment of which involves no forfeiture or restriction upon the privilege of engaging in interstate commerce,* places no burden upon interstate commerce where it is levied only upon those interstate commerce transactions which have become localized within the state and have been completed so that the tax is exacted only after the stream of income-producing interstate commerce has ceased to flow.

7. Although a net-income tax may not be imposed by a state on the *privilege* of engaging in interstate commerce, the state is not precluded from imposing such a tax upon other activities and aspects of the taxpayer's business which have become localized within the state, even though the payment of such tax comes out of funds derived from the taxpayer's interstate business, provided, however, that the tax is fairly apportioned and the burden thereof is reasonably related to the powers of the state and is nondiscriminatory.

Affirmed.

OPINION—Filed June 14, 1957

Matson, Justice.

Defendant taxpayer, a foreign corporation engaged exclusively in interstate commerce, appeals from a judgment in a proceeding by the State of Minnesota to collect income taxes—together with penalties and interest—upon that portion of the taxpayer's total net income which is allocable to Minnesota. The allocated tax relates to income derived solely from interstate commerce business conducted in [fol. 223] this state.[1]

Three questions are presented on appeal:

(1) Does the taxpayer have sufficient contact with the State of Minnesota to make it amenable to service of process and subject to the jurisdiction of the Minnesota courts?

(2) Is M. S. A. 290.03 in conflict with, and thus invalid and void under, the due process clause of U. S. Const. Amend. XIV, and Minn. Const. art. 1, §7, insofar as it imposes a tax on that portion of the net income of a foreign corporation arising out of sales assignable to and activities conducted within Minnesota?[2]

---

[1] This decision comes to the writer by reassignment.

[2] Section 290.03 reads as follows:

"An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

"(1) Domestic and foreign corporations not taxable under section 290.02 which own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both;

"Business within the state shall not be deemed to include transportation in interstate or foreign commerce, or both, by means of ships navigating within or through waters which are made international for navigation purposes by any treaty or agreement to which the United States is a party;

"(2) Resident and non-resident individuals, except that no non-resident individual shall be taxed on his income from compensation for labor or personal services within this state during any taxable year unless he shall have been engaged in

(3) Is §290.03 in conflict with, and thus invalid and void under, the commerce clause, U. S. Const. art. I, §8, [fol. 224] clause 3, insofar as it imposes a tax on that portion allocable to the taxing state of the net income of a foreign corporation whose business within the taxing state consists exclusively of interstate commerce?[3]

Taxpayer is an Iowa corporation engaged in the manufacture and sale of cement; its principal office and place of business is at Mason City, Iowa. Although the taxpayer maintains an office in Minneapolis and employs several representatives within the state who regularly and systematically solicit orders for the taxpayer's product, the taxpayer has never qualified under M. S. A. 303.03 as a foreign corporation authorized to transact business within this state.

Although in the course of its business in interstate commerce the taxpayer has for over 30 years systematically marketed a substantial part of its products in Minnesota, it has never filed income tax returns in this state. On refusal of the taxpayer to file income tax returns for the fiscal years 1933 through 1948 as required under §290.03, the commissioner of taxation prepared returns on the

---

work within this state for more than 150 working days during such taxable year;

"(3) Estates of decedents, dying domiciled within or without this state; and,

"(4) Trusts (except those taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations."

[3] For convenience in comparing §290.03 with §290.02, the latter section is set forth below:

"An annual tax is hereby imposed upon every domestic corporation, except those included within section 290.03, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within section 290.03, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.

"The tax so imposed shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and computed in the manner and at the rates provided in this chapter."

basis of the best information available to him, filed these returns for the taxpayer, and assessed against the taxpayer the income taxes shown to be due by the returns. In [fol. 225] the preparation of the returns, the commissioner used the three-factor formula prescribed by §290.19 to determine what portion of the taxpayer's total net income should be allocated to Minnesota and subjected to the income tax imposed by this state. The following application of the formula defines each of the three factors and illustrates the result of their employment in determining the portion of the taxpayer's net income allocable to Minnesota for the year ending November 30, 1948:

(1) The ratio of the taxpayer's sales assignable to Minnesota to its total sales for the year wherever made	48.4493	percent
(2) The ratio of the taxpayer's total tangible property in Minnesota to its total tangible property used in the business that year wherever situated	.1142	percent
(3) The ratio of the taxpayer's total payroll in Minnesota to its total payroll for the entire business.	1.6484	percent
Total	50.2119	percent
Arithmetical Average	16.7373	percent

The percentages for the three factors were added together for a total of 50.2119 percent and then divided by 3 to give the final arithmetical average of 16.7373 percent which represents the percentage of taxpayer's income allocable to Minnesota for the 1948 fiscal year.* The average percentage when applied to taxpayer's 1948 total net income of $852,897.74—after first deducting therefrom $12,667.57 for nonapportionable income arising from inter-

* The 1948 fiscal year represents the year ending November 30, 1948.

est and rents derived from property located outside Minnesota—shows for that year as apportionable to Minnesota a taxable net income of $140,631.84. Upon this latter sum of income, which is allocated to Minnesota pursuant to the three-factor formula, the commissioner assessed a tax of $8,370.53 plus certain penalties and interest. Total taxes, penalties, and interest assessed for the fiscal years 1933 to 1948 are $102,536.82.

[fol. 226] I

Was Taxpayer Amenable to Jurisdiction of Minnesota Court?

1. We turn to the first issue to ascertain whether the taxpayer was juridically present in this state as to be amenable to the jurisdiction of our courts. Whether a foreign corporation domiciled in another state is jurisdictionally present so as to be subject to the jurisdiction of the Minnesota courts depends in each case upon the quality and nature of the activities which it carries on within our state.[5] What activity or combination of activities are necessary to constitute jurisdictional presence[6] of a foreign corporation domiciled elsewhere, in order to comply with the due process clause of Amend. XIV, cannot be summarized so as to provide an arbitrary test for all cases. Each case must be determined on its own peculiar facts to ascertain whether the corporation has carried on activities of such a quality and nature that it can be said that it has, as a matter of due process, established contacts, ties, or relations within the forum which give rise to privileges and obligations which reasonably obligate it to respond to any suit brought within the forum.

---

[5] See, Schilling v. Roux Distributing Co. Inc., 240 Minn. 71, 59 N.W. (2d) 907; Hartmon v. National Heater Co., 240 Minn. 264, 60 N.W. (2d) 804; Continental C. & S. Management, Inc. v. American Broadcasting Co., 230 Minn. 217, 41 N.W. (2d) 263; Dahl v. Collette, 202 Minn. 544, 279 N.W. 561; Hutchinson v. Chase & Gilbert (2 Cir.), 45 F. (2d) 139.

[6] The symbolic terms *present* and *presence* as applied to a foreign corporation in ascertaining if state courts have jurisdiction has been ably discussed in Hutchinson v. Chase & Gilbert, *supra*, and in Schilling v. Roux Distributing Co. Inc., *supra*, and, therefore, need no discussion here.

[fol. 227] 2. Without determining whether regular and systematic solicitation of business within the state—which results in a continuous flow of the corporation's products into the state through the channels of interstate commerce—alone and of itself—constitutes jurisdictional presence we need not here determine. It is clear, in any event, however, that such regular and systematic solicitation, when corroborated by other and additional corporate acts or manifestations within the forum, does establish jurisdictional presence in compliance with the requirements of the due process clause. We need not here attempt to define what other acts are sufficient to furnish corroboration since in the present case the corroborative acts are both abundant and jurisdictionally significant. The taxpayer herein not only has regularly and systematically solicited business which has brought through the channels of interstate commerce a continuous flow into this state of its products, but as a further indication of its presence it has systematically carried on many additional activities and services which are summarized in the following four paragraphs.

Factual Summary of Taxpayer's Activities in Minnesota

We turn to the facts as found by the trial court and as sustained by the evidence. For the convenience of its salesmen and customers, the taxpayer rents and maintains in Minneapolis an office which is used to some extent as a central office and serves as a clearinghouse for orders and complaints. A full-time secretary is employed in this office; two telephone lines are maintained; and it is listed in both telephone (alphabetical and classified indexes) and city directories. One of the district representatives is in charge of this office and, with the taxpayer's knowledge, holds himself out as district manager. In addition to office [fol. 228] equipment, goodwill advertising and other material, taxpayer owns the automobiles driven by its Minnesota salesmen.

Taxpayer employs five sales representatives in Minnesota, two of whom work out of the Minneapolis office. The salesmen regularly and systematically solicit orders from eligible purchasers—building supply dealers, ready-mix operators, and large contractors. In addition, the salesmen

regularly and systematically contact potential customers and users of cement products (inclusive of architects and building and road contractors) to induce them to buy from taxpayer's established local outlets and dealers, promote goodwill and furnish advertising materials to customers, entertain customers, and occasionally receive and forward complaints. *The flow of taxpayer's products into Minnesota constitutes about 48 percent of its sales volume.*

All taxpayer's Minnesota employees are hired by supervisory personnel from its Mason City office, and no Minnesota employee has authority to hire or fire. Salesmen's territories are assigned by the Mason City office, and vacation schedules are established there. All orders are subject to acceptance by the office in Mason City, and credit extensions and collections are handled there, the salesmen having no authority to accept orders or extend credit.

The price of taxpayer's cement products is the delivered price to the customer, the sum of the base price plus the freight plus the package. Accordingly, the products are invoiced f. o. b. destination. Freight is prepaid by the taxpayer, and in no case can the customer purchase cement from taxpayer except at a delivered price nor, since taxpayer has no facilities for loading trucks, can the customer pick up cement at taxpayer's plant. Quotations giving both base and delivered price are sent directly to the customer from the Mason City office. Although the salesmen have no authority to give the customer a quotation, they do carry a rate book from which they regularly compute the [fol. 229] delivered price to the customer without a quotation. On the request of one of taxpayer's dealers, quotations for specific projects are sent from Mason City to the contractor. Such a quotation cites the dealer's price (f. o. b. dealer's warehouse) to the contractor.

II

Tax Does Not Violate Due Process Clause

3. The imposition of a net-income tax under §290.03 upon that portion of the taxpayer's net income which is allocated to Minnesota under the three-factor formula of §290.19 is not unconstitutional as violating the due process

clause of U. S. Const. Amend. XIV, or that of Minn. Const. art. 1, §7. A nondiscriminatory[7] state tax upon the net income[8] of a foreign corporation engaged *solely* in interstate business, which is fairly apportioned[9] to and measured by that part of the net income which is derived from business done within the state, contravenes neither the due process clause nor the commerce clause, where the incidence or subject of the tax is not the privilege of [fol. 230] either engaging in, or continuing to engage in, interstate commerce, but is instead those income-producing activities and transactions which, though indirectly related to interstate commerce,[10] have become separated from the flow of that commerce and have become so localized within the state as to compete with, and enjoy the benefits and advantages of, a local business, and which as localized commerce ought to pay their own way and not place other local business at a competitive disadvantage.[11]

---

[7] See, United States Glue Co. v. Town of Oak Creek, 247 U.S. 321, 328, 38 S. Ct. 499, 501, 62 L. ed. 1135, 1141, Ann. Cas. 1918E, 748, 750; Memphis Natural Gas Co. v. Stone, 335 U.S. 80, 87, 88, 68 S. Ct. 1475, 1478, 1479, 92 L. ed. 1832, 1839, 1840; Peck & Co. v. Lowe, 247 U.S. 165, 174, 38 S. Ct. 432, 434, 62 L. ed. 1049, 1052; Atlantic Coast Line R. Co. v. Daughton, 262 U.S. 413, 422, 43 S. Ct. 620, 623, 67 L. ed. 1051, 1060; 1953 Wash. U. L. Q. 233, 255.

[8] See, Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. ed. 445; Underwood Typewriter Co. v. Chamberlain, 254 U.S. 113, 41 S. Ct. 45, 65 L. ed. 165; United States Glue Co. v. Town of Oak Creek, 247 U.S. 321, 329, 38 S. Ct. 499, 501, 62 L. ed. 1135, 1141, Ann. Cas. 1918E, 748, 750.

[9] See, Western Live Stock v. Bureau of Revenue, 303 U.S. 250, 256, 58 S. Ct. 546, 549, 82 L. ed. 823, 828.

[10] See, Atlantic Coast Line R. Co. v. Daughton, 262 U.S. 413, 422, 43 S. Ct. 620, 623, 67 L. ed. 1051, 1060; West Publishing Co. v. McColgan, 328 U.S. 823, 66 S. Ct. 1378, 90 L. ed. 1603, affirming 27 Cal. (2d) 705, 166 P. (2d) 861; Cheney Brothers Co. v. Massachusetts, 246 U.S. 147, 155, 38 S. Ct. 295, 297, 62 L. ed. 632, 637.

[11] See, International Harvester Co. v. Dept. of Treasury, 322 U.S. 340, 349, 64 S. Ct. 1019, 1023, 88 L. ed. 1313, 1319; Gwin, White & Prince, Inc. v. Henneford, 305 U.S. 434, 59 S. Ct. 325, 83 L. ed. 272; Western Live Stock v. Bureau of Revenue, 303 U.S. 250, 259, 58 S. Ct. 546, 550, 82 L. ed. 823, 830; 1953 Wash. U. L. Q. 233, 242, 243, 253; 56 Dickinson L. Rev. 107, 109, 110; McGoldrick v. Berwind-White Co., 309 U.S. 33, 60 S. Ct. 388, 84 L. ed. 565, 128 A. L. R. 876.

Taxpayer's Localized Activities and Transactions Within State Satisfy Requirements of Due Process

We can only conclude that the taxpayer has sufficient factual connections with localized activities and transactions within the state to comply with the requirements of due process. As already noted, the taxpayer maintains within the state several resident representatives who regularly and systematically solicit orders which are forwarded to the corporation's principal business office in the adjoining state for acceptance or rejection. These representa- [fol. 231] tives, in addition to soliciting orders, entertain customers and furnish them with information, receive and forward their complaints, and furthermore, *contact prospective users of cement (inclusive of architects and building and road contractors) to induce them to buy cement through and from the taxpayer's established local outlets or dealers.*[12] In addition, the taxpayer maintains a local service office, permits its office manager and representative to hold himself out as its district representative, and otherwise engages in the many additional local activities *hereinbefore enumerated in a factual summary of taxpayer's activities in Minnesota.*

Taxpayer Receives Extensive Benefits of State Governmental Services and Enjoys the Protection of the State Courts

Clearly, this is not a case where a state reaches beyond its borders and fastens its tax talons upon an event having no factual connection with transactions within its borders whereby it is unable to confer anything in return for the exaction.[13] Here instead the taxpayer is present through its extensive localized activities and enjoys, in return for any taxes exacted, the opportunities, protection, and benefits of a modern community serviced by a state government

[12] See, Norton Co. v. Dept. of Revenue, 340 U.S. 534, 539, 71 S. Ct. 377, 381, 95 L. ed. 517, 521. An analogous situation arose with respect to the Northwestern Consolidated Milling Company in Cheney Brothers Co. v. Massachusetts, 246 U.S. 147, 155, 38 S. Ct. 295, 297, 62 L. ed. 632, 637.

[13] See, Hartman, State Taxation of Interstate Commerce, p. 117.

which maintains courts, police, roads, and other services of distinct advantage to the building and maintenance of the taxpayer's tremendous sales volume (48 percent of its total sales volume) through business outlets within the state. It is not amiss to observe that the taxpayer, or its immediate predecessor under a prior incorporation, has already had occasion to seek the benefit and protection of our courts.

[fol. 232] III

Final Issue—Not in Contravention of Commerce Clause

4. The tax imposed under §290.03 not only complies with the requirements of due process but is also not in contravention of the commerce clause since it does not impose a burden upon, or discriminate against, interstate commerce. Tax enactments violate the commerce clause when they either profess to regulate interstate commerce, or affect it so directly as to amount to a regulation, or discriminate against it so as to place it at a disadvantage with intrastate commerce.[14] In the present case we have a net-income tax, limited and apportioned to the income earned from and within the state, which neither burdens nor discriminates against the free flow of interstate commerce.[15] It is purely a general income tax which is not used as a measure or as a substitute for any other tax. It cannot by dictionary definition, legislative intent, or by operative effect be construed or classified as an excise, franchise, or privilege tax. It is not a tax imposed as a condition precedent to the exercise of the privilege of engaging in interstate commerce. *Failure to pay the tax does not work a forfeiture of any right to continue to engage in interstate commerce. It is collectible only by resort to the ordinary means of collecting taxes.* In this respect it involves no regulation of, or burden upon, interstate commerce.[16]

---

[14] See, McGoldrick v. Berwind-White Co., 309 U.S. 33, 60 S. Ct. 388, 84 L. ed. 565.

[15] Altman & Keesling, Allocation of Income in State Taxation, p. 29.

[16] Underwood Typewriter Co. v. Chamberlain, 254 U.S. 113, 41 S. Ct. 45, 65 L. ed. 165.

[fol. 233] *Statutory Language Precludes an Intent to Impose an Excise Tax or Privilege Tax*

5. A comparison of §290.02 with the section with which we are here directly concerned, namely §290.03, is enlightening in disclosing the true nature of the tax.[17] An examination of these sections discloses a clear distinction between the excise tax imposed on domestic and foreign corporations for the privilege of transacting business within the state and the income tax imposed under §290.03. First, the arrangement of the statute is indicative of the legislature's intention to differentiate between these two types of taxes: §290.02 imposes an excise tax, but §290.03 imposes purely an income tax. That the *annual tax* imposed by §290.03 upon the *taxable net income* is not an excise or privilege tax measured by net income, but purely a net-income tax wholly unrelated to the privilege of engaging in interstate commerce, becomes clear when we consider the character of the specifically designated types of taxpayers to which it equally and uniformly applies. Clearly, paragraphs (1), (2), (3), and (4) of §290.03 must be construed together since they relate to the imposition of the same kind of tax on four different classes of taxpayers, namely, on domestic and foreign corporations engaged exclusively in foreign or interstate commerce under paragraph (1); on resident and nonresident individuals under paragraph (2); on estates of decedents dying domiciled within or without the state under paragraph (3); and on trusts created by resident or nonresident persons or by domestic or foreign corporations under paragraph (4). Since the annual net-income tax imposed on individuals under paragraph (2) cannot by any legal legerdemain be construed as an excise or privilege tax, the same yardstick of meaning must be applied to the tax imposed under paragraph (1) upon foreign corporations engaged exclu- [fol. 234] sively in interstate commerce. A similar comparison of paragraphs (3) and (4) with paragraph (1) corroborates this conclusion.

---

[17] For convenience in making a comparison, the two sections, §§290.02 and 290.03, are set forth in full in footnotes 2 and 3.

Secondly, the distinction in the nature of these taxes is further emphasized by the provisions of §290.04, subd. 1, which establishes that liability for the excise tax—although measured by income—arises on the first day of the taxable year, while liability for the income tax arises concurrently with the receipt or accrual of income during the taxable year.

Tax Is Nondiscriminatory and Subject to Judicial Review

The tax is also nondiscriminatory. *It applies equally to all taxpayers, resident or nonresident, and whether they are engaged in either interstate or intrastate commerce. Significantly Minnesota, in dealing with resident and domestic taxpayers located within its borders and doing business partly within and partly without the state, imposes the tax only on that portion of the income allocable to earnings produced within this state.* As applied to nonresident taxpayers engaged in interstate commerce, it is confined to that portion of their income earned from business activities which are fairly apportioned to, and localized within, the state. It is not an arbitrary imposition since the taxpayer has the opportunity of voluntarily preparing and filing his own tax return according to the information which he himself possesses. If any error is thought to occur in the levy, measure, or the amount of the tax as based on his own return, or upon a return prepared for him by the tax commissioner, he may, like any resident taxpayer, petition the state Board of Tax Appeals for relief and after that he has a further right of appeal to this court.

Tax Is Fairly Apportioned to Intrastate Net-Income Sources and Does Not Impose a Multiple Tax Burden on Interstate Commerce

Taxpayer contends that the tax before us is invalid for the reason that it imposes a multiple tax burden upon its interstate business. Although a tax imposed upon gross [fol. 235] receipts or other incidents may be invalid for

this reason where not fairly apportioned,[18] such a tax is not invalid if it is fairly *apportioned* to the commerce carried on within the taxing state. Western Live Stock v. Bureau of Revenue, 303 U. S. 250, 58 S. Ct. 546, 82 L. ed. 823. Likewise, a tax imposed upon net income, if fairly apportioned to sources derived from within the taxing state, does not contravene the requirement of due process even though the taxpayer may be domiciled in another state.[19] Moreover, as hereinafter shown, such a tax does not violate the commerce clause although the income or a part of the income taxed is derived from interstate commerce.[20] The tax before us now is a tax upon net income and it is fairly apportioned to the net profit derived from taxpayer's business activities carried on in this state. It is therefore not invalid as imposing a multiple burden upon taxpayer's interstate business.

[fol. 236]

Mere Possibility That Iowa May Attempt to Tax Entire Income of Taxpayer Does Not Invalidate Minnesota Tax

We have, however, the suggestion, although there is no support for it in the record, that Iowa, as the domiciliary

---

[18] Adams Mfg. Co. v. Storen, 304 U.S. 307, 58 S. Ct. 913, 82 L. ed. 1365; Gwin, White & Prince, Inc. v. Henneford, 305 U.S. 434, 59 S. Ct. 325, 83 L. ed. 272; Case of State Freight Tax, 82 U.S. (15 Wall.) 232, 21 L. ed. 146; Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 74 S. Ct. 396, 98 L. ed. 583; Western Live Stock v. Bureau of Revenue, 303 U.S. 250, 58 S. Ct. 546, 82 L. ed. 823.

[19] Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. ed. 445; Underwood Typewriter Co. v. Chamberlain, 254 U.S. 113, 41 S. Ct. 45, 65 L. ed. 165; New York ex rel. Whitney v. Graves, 299 U.S. 366, 57 S. Ct. 237, 81 L. ed. 285; Altman & Keesling, Allocation of Income in State Taxation, p. 29.

[20] United States Glue Co. v. Town of Oak Creek, 247 U.S. 321, 38 S. Ct. 499, 62 L. ed. 1135, Ann. Cas. 1918E, 748; Underwood Typewriter Co. v. Chamberlain, 254 U.S. 113, 41 S. Ct. 45, 65 L. ed. 165; Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. ed. 445; Altman & Keesling, Allocation of Income in State Taxation, p. 29.

state, may attempt to impose a tax upon taxpayer's entire net income wherever earned. Most states, including Minnesota, however, permit their domiciliaries to apportion the net income derived from sources within the state and thereby excuse payment of a tax on net income derived from out-of-state sources.[21] Where, however, a domiciliary state does not voluntarily permit the apportionment of the total net income of the taxpayer, the United States Supreme Court has, by its treatment of a potential double tax burden in another situation, indicated that it may require the domiciliary state to permit apportionment. In the analogous situation the court, in dealing with an ad valorem tax, has held that a state other than the corporate domicile may impose a tax on the taxpayer's instrumentalities utilized in interstate commerce. Where, however, a tax is imposed by two or more states on an apportionment basis, the court declared that the *domiciliary* state is precluded from taxing all of taxpayer's property.[22] If the domiciliary state is required to apportion in the case of an ad valorem tax, there is no reason why it may not be required to do so with respect to a tax imposed upon taxpayer's net income.

A Net-Income Tax Is Not a Burden on Interstate Commerce

6. Clearly, a net-income tax places no burden upon interstate commerce. *The tax is levied after the interstate* [fol. 237] *commerce transactions localized within the state have been completed, and after all expenses are paid and losses adjusted, and after the taxpayer, as the recipient of the remaining net income, is free to use it as he chooses. Thus the tax is exacted only after the stream of income-producing interstate commerce has ceased to flow.* See, Peck & Co. v. Lowe, 247 U. S. 165, 175, 38 S. Ct. 432, 434, 62 L. ed. 1049, 1052. No longer may it be doubted that a tax may be levied on net income derived wholly from operations in

---

[21] Altman & Keesling, Allocation of Income in State Taxation, p. 31; M. S. A. 290.19.

[22] Standard Oil Co. v. Peck, 342 U.S. 382, 72 S. Ct. 309, 96 L. ed. 427; Braniff Airways v. Nebraska Board, 347 U.S. 590, 74 S. Ct. 757, 98 L. ed. 967.

interstate commerce, although a tax on that commerce is forbidden.[23]

In McGoldrick v. Berwind-White Co., 309 U. S. 33, 46, 60 S. Ct. 388, 392, 84 L. ed. 565, 570, 128 A. L. R. 876, 880, the court said:

> "* * * Not all state taxation is to be condemned because, in some manner, it has an effect upon commerce between the states, and there are many forms of tax whose burdens, when distributed through the play of economic forces, affect interstate commerce, which nevertheless fall short of the regulation of the commerce which the Constitution leaves to Congress. A tax may be levied on net income wholly derived from interstate commerce. Non-discriminatory taxation of the instrumentalities of interstate commerce is not prohibited. The like taxation of property, shipped interstate, before its movement begins, or after it ends, is not a forbidden regulation."

Spector Motor Service Decision Distinguished

7. Taxpayer contends, however, that since the rendition of the decision in Spector Motor Service v. O'Connor, 340 U. S. 602, 71 S. Ct. 508, 95 L. ed. 573, no tax, even though it be fairly apportioned and nondiscriminatory, may be levied on the net income of a foreign corporation engaged *exclusively* in interstate commerce. It is the position of the taxpayer that such a tax may be levied only in those [fol. 238] cases where the foreign corporation is engaged in both intrastate and interstate commerce. We cannot agree

---

[23] United States Glue Co. v. Town of Oak Creek, 247 U.S. 321, 38 S. Ct. 499, 62 L. ed. 1135, Ann. Cas. 1918E, 748; Shaffer v. Carter, 252 U.S. 37, 57, 40 S. Ct. 221, 227, 64 L. ed. 445, 459; see, McGoldrick v. Berwind-White Co., 309 U.S. 33, 47, 60 S. Ct. 388, 392, 84 L. ed. 565, 570, 128 A. L. R. 876, 880; Memphis Natural Gas Co. v. Beeler, 315 U.S. 649, 656, 62 S. Ct. 857, 862, 86 L. ed. 1090, 1097; West Publishing Co. v. McColgan, 328 U.S. 823, 66 S. Ct. 1378, 90 L. ed. 1603, affirming 27 Cal. (2d) 705, 166 P. (2d) 861.

with this interpretation of the Spector case. The Spector case did not turn on the fact that the foreign corporation was *solely* engaged in interstate commerce. The nub of the decision is that a net-income tax, even though it be fairly apportioned and nondiscriminatory, may not be imposed on the *privilege* of engaging in business that is exclusively interstate in character. The Connecticut Supreme Court construed its statute as involving a direct imposition of the tax upon the *franchise or privilege* of engaging in interstate commerce. The United States Supreme Court clearly accepted this construction as controlling its interpretation. This is not unusual. In Memphis Natural Gas Co. v. Stone, 335 U. S. 80, 84, 85, 68 S. Ct. 1475, 1477, 92 L. ed. 1832, 1838, the court expressly declared that it was bound by the construction of a state statute by the state court. Although the United States Supreme Court has on occasion looked behind a state court's holding that a tax is not a burden upon interstate commerce, *it has not done so where the state court has by its construction admitted or declared the tax to be a burden upon that commerce.* Since the incidence of the tax in the Spector case was the *privilege* itself of engaging in interstate commerce, it fell before the commerce clause. The court carefully distinguished those cases in which, as an exception to the general rule that no tax may be levied upon the *privilege* of engaging in interstate commerce, a state, where a taxpayer is engaged in both intrastate and interstate commerce, is permitted to tax the *privilege* of carrying on intrastate business and, within reasonable limits, is permitted to apply a fair proportion of the tax to the taxpayer's business which is done within the state. The court refused to extend the application of these hybrid cases to a taxpayer, like Spector, who is engaged exclusively in interstate commerce. The majority expressly stated that (340 U. S. 610, 71 S. Ct. 513, 95 L. ed. 579) "the federal *privilege* of carrying on exclusively interstate commerce" must be kept "free from state taxation." (Italics supplied.)

[fol. 239] The court, in the Spector case, carefully pointed out that whether a state may validly make interstate commerce pay its own way depends first of all upon the constitutional channel through which it attempts to do so, citing Freeman v. Hewit, 329 U. S. 249, 67 S. Ct. 274, 91 L. ed. 265, and McLeod v. Dilworth Co., 322 U. S. 327, 64 S. Ct. 1023, 88 L. ed. 1304. Apparently in an effort to prevent misunderstanding of the rule of its holding, and for the purpose of indicating that a constitutional channel is available to the states, the court said (340 U. S. 609, 71 S. Ct. 512, 95 L. ed. 578):

> "• • • *The State is not precluded from imposing taxes upon other activities or aspects of this business* which, unlike the *privilege* of doing interstate business, are subject to the sovereign power of the State. Those taxes may be imposed although their payment may come out of the funds derived from petitioner's interstate business, provided the taxes are so imposed that their burden will be reasonably related to the powers of the State and nondiscriminatory." (Italics supplied.)

It follows that the Spector decision makes it reasonably clear that there is a constitutional channel for making interstate commerce pay its own way and that this channel gives the state a right to impose taxes upon other activities and aspects of the interstate commerce business which, unlike the *privilege* of doing interstate business, are subject to the sovereign power of the state despite the fact that such taxes may be derived out of income from interstate business.

Alpha Portland Cement Co. Decision Distinguished

The Spector decision, in support of its holding that a state may not tax the *privilege* of carrying on a business that is exclusively interstate in character, cites Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203, 45 S. Ct. 477, 69 L. ed. 916, wherein an attempt was made to impose an excise tax upon the *privilege* of engaging in a business solely interstate in character. The Alpha case does nothing

more than emphasize the rule that taxes upon the *privilege* of doing interstate business violate the commerce clause.

[fol. 240] *Cheney Brothers Co. v. Massachusetts Supports Validity of Tax Herein*

In Cheney Brothers Co. v. Massachusetts, 246 U. S. 147, 38 S. Ct. 295, 62 L. ed. 632 (cited in the Alpha case), involving consideration of the validity of an excise tax imposed upon seven foreign corporations, each differently situated, we have a good illustration of the principle that a state may impose a valid tax if the proper constitutional channel is selected. One of the foreign corporations involved therein was the Northwestern Consolidated Milling Company, which, like the instant taxpayer, had localized its business within the state. In upholding the validity of the tax upon this corporation, the court said (246 U. S. 155, 38 S. Ct. 297, 62 L. ed. 637):

> "This company was incorporated under the laws of Minnesota, operates flour mills there, and sells the flour to wholesale dealers throughout the country. It has an office in Massachusetts where it employs several salesmen for the purpose of inducing local tradesmen to carry and deal in its flour. These salesmen solicit and take orders from retail dealers and turn the same over to the nearest wholesale dealer, who fills the order and is paid by the retailer. Thus the salesman, although not in the employ of the wholesaler, is selling flour for him. *Of course this is a domestic business,—inducing one local merchant to buy a particular class of goods from another,*—and may be taxed by the State, regardless of the motive with which it is conducted." (Italics supplied.)

In the case at bar we also have salesmen who call upon the users of cement to induce them to give their business to the local dealers who handle the taxpayer's product.

West Publishing Co. v. McColgan Similarly Distinguishes Spector and Alpha Cases and Supports Validity of Income Tax on Foreign Corporations Where Net Income Is the Subject as Well as the Measure of the Tax

That our interpretation of the Spector and the Alpha cases is correct is further illustrated by a comparatively recent decision involving facts substantially similar to those of the case at bar, namely, West Publishing Co. v. McColgan, 328 U. S. 823, 66 S. Ct. 1378, 90 L. ed. 1603, affirming 27 Cal. (2d) 705, 166 P. (2d) 861. The West case [fol. 241] has been well summarized as follows:

> "* * * this company was in the law book publishing business, a Minnesota corporation. The company shipped books and other publications into California pursuant to orders taken by its salesmen who devoted their full time to their jobs in California. These employees had space in lawyers' offices in exchange for the use of books stored there. The California employees were authorized to and did receive payments on orders, collected deliquent [sic] accounts and made adjustments on complaints of customers.
>
> "The State of California cognizant of the fact that a state may not exact a tax for the *privilege* of doing an exclusively interstate business, imposed an income tax on those corporations not subject to its franchise tax. It made net income the subject as well as the measure of its *Corporation Income Tax*. It limited the measure of the tax to income from California sources which was understood to mean income from sources of books and periodicals delivered in California. The California Supreme Court sustained the assessment holding that 'a tax on net income from interstate commerce as distinguished from a tax on the privilege of engaging in interstate commerce does not conflict with the commerce clause.' The U. S. Supreme Court unanimously affirmed this decision by a *per curiam* opinion." (Italics supplied.)[24]

---

[24] Kraus, *The Implications of the Spector Motor Service Case*, 56 Dickinson L. Rev. 107, 112.

Comparison of West With Spector and Alpha Decisions

In the Spector and Alpha cases, both involving foreign corporations engaged exclusively in interstate commerce, the tax was held invalid because it was imposed directly on the *privilege* of doing that business. In the West case, however, the tax was valid because it was a tax on the net income from business localized within the state and not a tax on the *privilege* of engaging in interstate commerce. In connection with the West case, it is significant to note [fol. 242] that the California statutory scheme of taxation is similar to that of Minnesota. See Appendix at the end of this opinion.[25]

In the light of the intent, as well as the carefully restricted impact, of our state statutes, as applied to taxpayer's extensive localized activities within Minnesota, we can only conclude that the net-income tax imposed under §290.03, pursuant to the decisions of the United States Supreme Court, does not contravene the due process clauses of either the Federal or the State Constitutions and does not conflict with the commerce clause.

The trial court is affirmed.

Affirmed.

LEROY E. MATSON

---

[25] The relatively recent Pennsylvania Supreme Court decision in Commonwealth v. Eastman Kodak Co., 385 Pa. 607, 124 A. (2d) 100, is neither controlling nor in point. In that case the incidence of the tax was held to be the franchise or privilege of doing interstate commerce. The Kodak Company did not maintain a service office within Pennsylvania for the convenience of its customers and salesmen. Furthermore, the Kodak Company did not have a local manager; did not contact prospective users of its products to persuade them to patronize its local dealers; and did not, in any material degree, carry on the systematic local activities characteristic of the taxpayer herein. In the instant case the taxpayer is present in Minnesota through its extensively localized activities and these activities—unlike those in the Pennsylvania case—provide the necessary incidence for the tax.

[fol. 243] APPENDIX TO OPINION

In connection with the West decision, it is interesting to note that California's statutory scheme of taxation under its Corporation Income Tax Act of 1937 and Bank and Corporation Franchise Tax Act is very similar to Minnesota's. The California statute provides:

> "There shall be levied, collected and paid for each taxable year, a tax * * * upon the net income of every corporation derived from sources within this State * * *. Income from sources within this State includes income from tangible or intangible property located or having a situs in this State and income from any activities carried on in this State, regardless of whether carried on in intrastate, interstate or foreign commerce." Calif. Stat. 1937, c. 765, §3.

The act excepts from its provision any income included in the measure of the corporate excise tax. The California Supreme Court's determination that the tax as valid was affirmed by the Supreme Court of the United States. West Publishing Co. v. McColgan, 27 Cal. (2d) 705, 166 P. (2d) 861, affirmed, 328 U. S. 823, 66 S. Ct. 1378, 90 L. ed. 1603.

On the other hand, Spector Motor Service v. O'Connor, 340 U. S. 602, 71 S. Ct. 508, 95 L. ed. 573, was concerned with the construction of a statute which, on its face, professed to impose an excise tax for the privilege of transacting business within the state. The Connecticut Corporation Business Tax Act of 1935 imposed, with certain exceptions not involved here, on every corporation carrying on business within the state—

> "* * * a tax or excise upon its franchise for the privilege of carrying on or doing business within the state, such tax to be measured by the entire net income * * * received by such corporation * * * from business transacted within the state * * *." Conn. Cum. Supp. to Gen. Stat. 1935, §418c.

[fol. 244] NELSON, Justice (dissenting).

I respectfully dissent from the conclusions reached in the majority opinion on defendant's tax liability.

It is undisputed that the taxpayer is an Iowa corporation domiciled in that state; that its business is the manufacture and sale of cement and cement products; and it maintains its home and principal business offices, as well as its manufacturing plant, at Mason City, Iowa.

Taxpayer has never qualified under M. S. A. 303.03 as a foreign corporation authorized to do business in the State of Minnesota, nor does the record indicate that the state has ever demanded such qualification or compliance with that statute. There is no indication from the record that this state could demand such compliance nor that it could deny defendant the right to freely engage in interstate commerce within its borders.

Taxpayer admits that, while engaged in interstate commerce in the manufacture and sale of its products, it has over a period of approximately 30 years found a market for a large amount of its products in Minnesota, but alleges that it has operated in the same manner in Iowa, Nebraska, North Dakota, South Dakota, and Wisconsin. Taxpayer has never filed income tax returns in this state. The state commissioner of taxation determined to claim part of the income earned by taxpayer as taxable by Minnesota, and upon taxpayer's refusal to file returns, he prepared the returns in his own office on the basis of information available to him and caused them to be filed.

The commissioner used the so-called three-factor formula described in §290.19 in determining the portion of defendant's overall net income which was to be allocated to Minnesota and subjected to the income taxes imposed by this state. The three factors specified pursuant to the statutory formula were: (1) The ratio of the taxpayer's sales made in Minnesota during the year to its total sales for the year wherever made; (2) the ratio of the taxpayer's total tangible property used in the business that year to [fol. 245] the total tangible property wherever situated; and (3) the ratio of the taxpayer's total payroll in Minnesota for the year to its total payroll for its entire business that year.

The figures arrived at in the commissioner's returns were demanded from taxpayer under §290.03 and Minnesota Income Tax Regulations, Reg. 2003(1), as applicable to income

tax on corporations.[26] The total alleged tax deficiency, if collectible, is not in dispute.

During the relevant business years taxpayer maintained only one office in this state. That office, located in Minneapolis, was occupied under a lease negotiated and paid for from the home office at Mason City, Iowa. Taxpayer did not own or occupy a warehouse or storage or manufacturing plant in this state. It owned no real estate here, and its only personal property in this state was its salesmen's automobiles, its office furniture, and a small amount of supplies and good will advertising material. The Minneapolis office was a sales office where taxpayer's salesmen met customers. The office consisted of three small rooms and contained three desks, two filing cabinets, a typewriter, and some chairs. All personal property including salesmen's automobiles and office supplies except postage stamps were requisitioned from the home office and were bought and paid for there.

During the years involved five salesmen were employed in this state. Two operated from the Minneapolis office and the other salesmen operated directly out of their homes at different points in the state. The only other employee was a secretary who worked at the Minneapolis office. All these employees were hired by supervisory personnel at tax- [fol. 246] payer's home office. At no time did any of the above employees possess or exercise authority to hire or fire other employees, nor did the employees have authority to purchase supplies other than postage stamps. Taxpayer did not maintain a bank account in this state, and all salaries paid Minnesota employees were fixed by the sales manager at Mason City and paid directly from the home office. Territories for each salesman were allocated at the

---

[26] Reg. 2003(1) of Minnesota Income Tax Regulations 1955 (income tax on corporations) provides:

"All corporations, domestic or foreign, whose business within this State during any taxable year consists exclusively of interstate commerce, are subject to a tax imposed directly upon their taxable net income under the provisions of M. S. A. 290.03(1). This provision requires the imposition of a tax on the net income from interstate commerce or foreign commerce assignable to Minnesota."

home office, and no salesman had authority to reallocate. Customer entertainment expenses incurred in this state were paid directly from the home office. Employees were compensated by salary only, without provision for commissions.

The sales procedure was one of solicitation and taking orders. The salesmen received the buyer's order which they forwarded to the home office. There the order was examined before acceptance. Buyer's credit was subject to home office approval. If the order was accepted, the buyer was sent an acknowledgment from the home office and the cement product shipped directly to the buyer by rail, f. o. b. Mason City, Iowa. All merchandise was invoiced and shipped from Mason City directly to the buyer. All price quotations and changes thereof were sent directly to the customer from the home office. Prices were quoted at millsite rate at Mason City, Iowa, plus, for the buyer's convenience, the freight to the buyer's place of business. The salesmen were required to transmit all orders received to the home office daily. All contracts were executed at the Mason city office and then sent directly to the customer. Credit extensions and collections were handled only at the home office. The salesmen were without authority to accept or reject a customer's order or to approve his credit. The buyer's claim for loss or damage was handled only by the home office. Any claims presented to the salesmen were transmitted to the home office for disposition. The authority of the salesmen was limited to the solicitation of sales and promotion of good will, and for all practical purposes they were devoid of any managerial responsibility. There is [fol. 247] testimony that one salesman had at times held himself out as defendant's district manager. The record indicates doubt whether this was with or without taxpayer's knowledge.

Based upon taxpayer's activities as disclosed by the record connected with its operations in Minnesota, the trial court found that those activities consisted of a regular and systematic course of solicitation of orders for the sale of merchandise, such orders being subject to approval, acceptance, filling, and delivery by the taxpayer from its home office at Mason City, Iowa. The court found that a

predecessor of defendant had resorted to the courts of Minnesota to enforce its contract on one occasion. The record does not disclose that the present defendant has at any time resorted to the courts of this state to enforce its contracts. The trial court in its memorandum, which was made a part of the decision in this case, stated *"Obviously this tax is a tax upon the net income of a foreign corporation whose business is exclusively that of foreign commerce or interstate commerce or both."* (Italics supplied.) The court below also characterized taxpayer's activities in this state as an integral part of its interstate activities, with all revenues received by it from customers' sales in Minnesota resulting from its operation in interstate commerce.

The trial court, nevertheless, by its conclusions of law, determined in effect that taxpayer's activities in Minnesota were sufficient in the local field to render it subject to the court's jurisdiction and moreover subject to taxation based upon apportionment under the formula applied to determine taxpayer's net income from its Minnesota activities. Based upon the findings made, it concluded that the tax as assessed, and if collected, does not contravene the due process clause of either U. S. Const. Amend. XIV, or Minn. Const. art. 1, §7, nor does the tax as assessed conflict with or violate the commerce clause, U. S. Const. art. I, §8, [fol. 248] clause 3."

Even though the position of the taxpayer herein that mere solicitation does not constitute sufficient doing of business to subject defendant corporation to suit is some-

---

[27] U.S. Const. art. I, §8, clause 3, provides:

"The Congress shall have power:

* * * * *

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;"

U.S. Const. Amend. XIV, §1, provides:

"* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, * * * ."

Minn. Const. art. 1, §7, provides in part:

"No person shall * * * be deprived of life, liberty or property without due process of law."

what persuasive, we take no issue with the majority opinion on its statement relative to service of process or the question whether the courts of Minnesota acquire jurisdiction of taxpayer.

Difficulties are encountered because of the natural inclination to equate amenability to service of process to jurisdiction to tax. Such, however, is not the case. Amenability to suit and imposition of the taxing power are distinct problems. While the service of process may well subject the taxpayer corporation here involved to jurisdiction in personam, there remains nevertheless the question of jurisdiction of the thing as distinguished from the jurisdiction of the person, even though in International Shoe Co. v. Washington, 326 U. S. 310, 321, 66 S. Ct. 154, 161, 90 L. ed. 95, 105, the United States Supreme Court stated:

> "• • • The activities which establish its 'presence' subject it alike to taxation by the state and to suit to recover the tax."

We consider the important questions on this appeal to be (1) whether M. S. A. 290.03 is in conflict with and violative of the due process clauses of U. S. Const. Amend. XIV, and Minn. Const. art. 1, §7, insofar as it seeks to impose a tax [fol. 249] on income of a foreign corporation which arises wholly out of sales and activities carried on and consummated exclusively in interstate commerce and, except for continuous and systematic solicitation on the part of its salesmen and their activities within the state, otherwise conducted exclusively without and beyond the borders of the state of Minnesota, and (2) whether §290.03 is in conflict with and violative of the commerce clause, U. S. Const. art. I, §8, clause 3, insofar as it seeks to impose a tax on the net income of taxpayer, a foreign corporation, whose business activities in this state were an integral part of its interstate activities and whose business consists exclusively of interstate commerce.

Deciding that the taxpayer, a foreign corporation, can be sued in Minnesota, does not decide that it is subject to being taxed in this state. The question of the application of the taxing power must be decided upon the merits.

See, Kendall v. Orange Judd Co., 118 Minn. 1, 136 N. W. 291; 18 Fletcher, Cyclopedia of Corporations (Perm. ed.) §8712. The operating incidence within the taxing state of the foreign corporation is controlling as to liability to taxation or other burdens which may be imposed upon interstate commerce measured by the multiple-burden test.

The claimed activities of the taxpayer's soliciting salesmen allegedly give rise to the tax issue here. Jurisdiction in personam, not offensive to traditional notions of fair play, allows the trial court to proceed to decide the issues arising in the case on its merits.

Section 290.03, upon which the state relies for the collection of the taxes assessed against the taxpayer,[28] in fact provides for an annual tax without designating the type of tax. The tax is measured by the net income according to the apportionment formula provided for in §290.19. See, [fol. 250] Western Auto Supply Co. v. Commr. of Taxation, 245 Minn. 346, 71 N. W. (2d) 797. Although the tax is measured by net income, and the commissioner of taxation and the taxpayer corporation do not contend that it is anything but an income tax, it has elements of an excise tax.

An excise tax is synonymous with a privilege tax. American Airways v. Wallace (M. D. Tenn.), 57 F. (2d) 877. The mere fact that the tax is measured by a percentage of net income does not prevent it from being an excise or privilege tax. Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, 41 S. Ct. 45, 65 L. ed. 165.

An excise tax is an indirect charge for the privilege of following an occupation or trade, or carrying on a business; while an income tax is a direct tax imposed upon income and is as directly imposed as is a tax on land. United States v. Philadelphia, B. & W. R. Co. (E. D. Pa.), 262 F. 188. The constitutionality of the tax depends upon the substance of the statute and the real character of the tax, rather than upon the name given the tax by the legislature.

A tax measured by the income or earnings of a corporation may be in fact an excise or franchise tax, although the statute imposing the same does not so denominate it.

---

[28] See footnote 26.

Security Sav. & Commercial Bank v. District of Columbia, 51 App. D. C. 316, 279 F. 185.

However, determining that a tax is an excise tax on the privilege of doing business is not to decide the case. Practical operation, not descriptive labels, of the challenged tax statute must and will determine validity of application. Interstate Oil Pipe Line Co. v. Stone, 337 U. S. 662, 69 S. Ct. 1264, 93 L. ed. 1613. Mr. Justice Reed in a footnote in his dissent in that case noted (337 U. S. 677, 69 S. Ct. 1272, 93 L. ed. 1626):

> "Since we perceive no difference for the purposes of this case between franchise, privilege, and excise taxes, insofar as they are exacted for the privilege of doing or the doing of interstate business, we have treated them as identical as far as their validity under [fol. 251] the commerce clause is concerned."[29]

In one of the opinions appearing in connection with the litigation of Spector Motor Service v. O'Connor (2 Cir.), 181 F. (2d) 150, 156, the court reviewed its function concerning state taxation of interstate commerce as follows:

> "We should not be understood as claiming that the constitutionality of a tax should depend upon the name the legislature has given it. * * * Hence we do not suggest that the tax is automatically constitutional merely because it is measured by net income, and a net income tax has been held to be an indirect burden. *Rather we should look to the actual operation of the tax and decide whether it discriminates against interstate commerce, whether it is unduly burdensome to interstate commerce, whether it attempts to reach activities outside the borders of the state, and whether it is susceptible of being repeated by any other state. If these questions are answered in the negative, if the tax is a fair and a just attempt to make all commerce,*

[29] As previously stated: "This court has repeatedly adjudged that * * * the judiciary will not regard mere forms, but will look through forms to the substance of things." Western Union Tel. Co. v. Kansas, 216 U.S. 1, 27, 30 S. Ct. 190, 197, 54 L. ed. 355, 366.

intrastate and interstate, bear its share of the costs of government, then the tax should be held valid." (Italics supplied.)

See, also, Spector Motor Service v. Walsh (2 Cir.), 139 F. (2d) 809, including dissent by Judge Learned Hand.

A state's area of taxation is limited by its geographical borders. Generally, where interstate commerce is involved, the general business situs of taxpayer being wholly in another state, property or the existence of business activities sufficient in the local field to be designated or classified as intrastate commerce must be found within the taxing state, affording an appropriate channel through which to tax, before that state may levy a tax which even indirectly affects the business of a foreign corporation. Where taxpayer is engaged both in interstate and in intrastate com- [fol. 252] merce, a state may tax the privilege of carrying on intrastate business and, within reasonable limits, in order to arrive at the measure of business within the taxing state, may compute the charge by applying the tax rate to a fair proportion of the taxpayer's business done within the state and, as a basis for arriving at its apportionment, include in its calculations both interstate as well as intrastate business. It may be said that it is in substance the rule that the interstate commerce clause prohibits the state which is not the domiciliary one from taxing in any manner the act of engaging in interstate commerce within its limits and also from taxing property engaged in interstate commerce, when it may legally do so, at a higher rate than any other property. It would appear to be generally understood that every form of taxation directly imposed upon interstate or foreign commerce is prohibited to the states beyond all controversy and that the only question which arises in this class of cases is how far a state tax may incidentally affect the free flow of foreign or interstate commerce without falling within the inhibition implied from the exclusive power of Congress, to which the Constitution commits the regulation of commerce with foreign nations and among the several states. It would be a simple matter if the exact limits of the power of a state to levy taxes which incidentally affect interstate commerce were

capable of precise definition. Decisions must be made depending upon the facts in each case since almost every tax imposed by a state in some degree affects interstate commerce. Always, the important question is whether interstate commerce is affected to an unconstitutional extent and whether the degree to which it is affected constitutes an undue burden upon such commerce.

In Alpha Portland Cement Co. v. Commonwealth, 248 Mass. 156, 142 N. E. 762, it was held by the state court that a state may lawfully impose an excise tax on a foreign corporation engaged exclusively in interstate commerce provided the tax is measured by net income from the business transacted in the taxing state. It would appear that the Massachusetts court in the foregoing case and in [fol. 253] Alpha Portland Cement Co. v. Commonwealth, 244 Mass. 530, 139 N. E. 158, based its decision upon the theory of remuneration for local protection and benefits without reference to the distinction drawn in some cases between local taxation of foreign corporations engaged exclusively in interstate commerce and those engaged in both interstate and intrastate commerce.

The United States Supreme Court, however, in Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203, 45 S. Ct. 477, 69 L. ed. 916, reversed the decisions of the Massachusetts court in both cases, holding that the imposition of the tax was an unconstitutional burden on interstate commerce. The United States Supreme Court in that decision in effect denied altogether the power of the state to impose a tax in any form on a corporation engaged exclusively in an interstate business. As that court is the final arbiter of questions of the character involved, it must appear somewhat obvious that, until that decision is overruled or limited by the United States Supreme Court iself, (sic) it has thereby settled the question, not only of the power of a state to impose an excise tax, or even a net-income tax if the tax be denominated as such, on foreign corporations engaged exclusively in interstate commerce measured by income from business within the state, but of the power to impose a tax in any form on such corporations.[30]

---

[30] See, Annotation, 44 A. L. R. 1228 to 1231.

It was laid down as a general rule in Adams Mfg. Co. v. Storen, 304 U. S. 307, 58 S. Ct. 913, 82 L. ed. 1365, that a state taxing statute which discriminates against interstate commerce is invalid. We think it well settled under the constitutional provisions involved here that interstate or foreign commerce may not be taxed by a state and that a state may not impose upon foreign corporations a tax for the privilege of engaging in such commerce except where the local incidence of the operations in the taxing state lays a [fol. 254] basis for classifying such local operations as intrastate activity,[31] or in essence as intrastate commerce.

Upon a state of facts similar to those of the instant case, the United States Supreme Court in Cheney Brothers Co. v. Massachusetts, 246 U. S. 147, 153, 38 S. Ct. 295, 296, 62 L. ed. 632, 636, said:

> "We do not perceive anything in this that can be regarded as a local business as distinguished from interstate commerce. The maintenance of the Boston office and the display therein of a supply of samples are in furtherance of the company's interstate business and have no other purpose. Like the employment of the salesmen, they are among the means by which that business is carried on and share its immunity from state taxation. * * * *We think the tax on this company was essentially a tax on doing an interstate business and therefore repugnant to the commerce clause.*" (Italics supplied.)

The Supreme Court of the United States in holding that the attempted imposition of the income tax was void and repugnant to the commerce clause of the United States Constitution in the Alpha Portland Cement Co. case, relying on its earlier decision in the Cheney Brothers Co. case, said (268 U. S. 219, 45 S. Ct. 481, 69 L. ed. 924):

> "The excise challenged by plaintiff in error is not materially different from the one declared unconstitutional in Cheney Brothers Co. v. Massachusetts, and

---

[31] Also, see, Annotations, 105 A. L. R. 11 to 67, and 117 A. L. R. 444 to 446.

> cannot be enforced against a foreign corporation which does nothing but interstate business within the State. The introduction of an extremely complicated method for calculating the amount of the exaction does not change its nature or mitigate the burden."

Thus, the United States Supreme Court struck down the attempted imposition of an *income tax* as unconstitutional when applied to a foreign corporation doing only interstate business in the taxing state, where no local incidence follows from the operational activities of a foreign corporation giving rise to intrastate business or commerce, holding, in that situation, that a state may not tax the interstate [fol. 255] business of a corporation of another state.[32] The principles of the latter cases were followed in Spector Motor Service v. O'Connor, 340 U. S. 602, 71 S. Ct. 508, 95 L. ed. 573.

The issue before the United States Supreme Court in that case had been rather distinctly stated by Judge Learned Hand in his dissenting opinion in Spector Motor Service v. Walsh (2 Cir.) 139 F. (2d) 809, 822, where he said:

> "* * * we have before us in the barest possible form the effort of a state to levy an excise directly upon the privilege of carrying on an activity which is neither derived from the state, nor within its power to forbid."

In Norton Co. v. Dept. of Revenue, 340 U. S. 534, 537, 71 S. Ct. 377, 380, 95 L. ed. 517, 520, the United States Supreme Court said:

> "Where a corporation chooses to stay at home in all respects except to send abroad advertising or drummers to solicit orders which are sent directly to the home office for acceptance, filling, and delivery back to the buyer, it is obvious that *the State of the buyer has no local grip on the seller.*" (Italics supplied.)

---

[32] Western Union Tel. Co. v. Kansas, 216 U.S. 1, 30 S. Ct. 190, 54 L. ed. 355.

In Memphis Steam Laundry Cleaner v. Stone, 342 U. S. 389, 72 S. Ct. 424, 96 L. ed. 436, Mr. Chief Justice Vinson speaking for the court made it clear *that a tax, the operational incidence of which caused it to fall upon solicitation of interstate business, was a tax on interstate commerce itself.* The court then stated why the tax would not be permitted to conflict with the constitutional mandate on the regulation of commerce between the states (342 U. S. 395, 72 S. Ct. 428, 96 L. ed. 441):

> "* * * The Commerce clause created the nation-wide area of free trade essential to this country's economic welfare by removing state lines as impediments to intercourse between the states. The tax imposed in this case made the Mississippi state line into a local obstruction to the flow of interstate commerce that cannot stand under the Commerce Clause."

[fol. 256] Other cases that bear with considerable force upon the interstate commerce questions involved here are Ozark Pipe Line Corp. v. Monier, 266 U. S. 555, 45 S. Ct. 184, 69 L. ed. 439; Interstate Oil Pipe Line Co. v. Stone, 337 U. S. 662, 69 S. Ct. 1264, 93 L. ed. 1613; Joseph v. Carter & Weekes Stevedoring Co., 330 U. S. 422, 67 S. Ct. 815, 91 L. ed. 993; McLeod v. Dilworth Co., 322 U. S. 327, 64 S. Ct. 1023, 88 L. ed. 1304; Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 157, 74 S. Ct. 396, 98 L. ed. 583; Freeman v. Hewit, 329 U. S. 249, 67 S. Ct. 274, 91 L. ed. 265; Adams Mfg. Co. v. Storen, *supra;* Gwin, White & Prince, Inc. v. Henneford, 305 U. S. 434, 59 S. Ct. 325, 83 L. ed. 272; Nippert v. Richmond, 327 U. S. 416, 66 S. Ct. 586, 90 L. ed. 760.[33]

The commerce clause of the Federal Constitution controls the respective powers of the state and Federal governments

---

[33] Since the decision in the Spector Motor Service case, several of the highest state courts have ruled upon local taxes laid on exclusively interstate business declaring them void. Mississippi River Fuel Corp. v. Hoffman, 4 Ill. (2d) 468, 123 N.E. (2d) 503; Gross Income Tax Division v. Surface Combustion Corp., 232 Ind. 100, 111 N.E. (2d) 50; Roy Stone Transfer Corp. v. Messner, 377 Pa. 234, 103 A. (2d) 700.

in connection with interstate commerce. The commerce clause is not merely an authorization to Congress to enact laws for the protection and encouragement of commerce among the states, but it is a commitment to it by the Constitution to regulate commerce with foreign nations and among the several states. It also creates an area of trade free from interference by the states, and none is permitted to take any action which may be deemed to impede the free flow of trade between states. We think the record clearly indicates that taxpayer is exclusively engaged in interstate commerce, subject only to a determination of the question whether the local incidence of its operations in Minnesota provide a basis for the assess-[fol. 257] ment of the tax which the state seeks to impose and that under the decisions we have just referred to, to the extent that the taxpayer's activities are exclusively in interstate commerce, there will be immunity from state taxation.

The governing principles, which were early stated in McCulloch v. Maryland, 17 U. S. (4 Wheat.) 316, 4 L. ed. 579; Brown v. Maryland, 25 U. S. (12 Wheat.) 419, 6 L. ed. 678, and repeated in Robbins v. Shelby County Taxing Dist., 120 U. S. 489, 7 S. Ct. 592, 30 L. ed. 694, indicate that the taxing power of the states has for the most part been closely scrutinized in the commerce field, while Congress, which has the power to lessen or take away immunity in the interstate commerce field in state taxation, has been slow to interfere, except in a limited way and in limited and prescribed fields with the added burden light and controllable, where to do so would impede the free flow of trade between the states. A burden on interstate commerce is no less objectionable because it is imposed by a state under the taxing power rather than under the state police power. Freeman v. Hewit, *supra*. Interstate commerce should bear its fair share of the tax load. Western Live Stock v. Bureau of Revenue, 303 U. S. 250, 58 S. Ct. 546, 82 L. ed. 823. However, to suggest that a tax on interstate commerce is valid because a similar tax is placed on local trade is to disregard the commerce clause. Freeman v. Hewit, *supra*. So long as the commerce clause is recognized as preventing any interference with inter-

state trade, there will be discussion concerning the conflicting claims of the state taxing power and the commerce clause. See, Hartman, *State Taxation of Interstate Commerce: An Appraisal and Suggested Approach*, 1953 Wash. U. L. Q. 233; Kraus, *The Implications of the Spector Motor Service Case;* 56 Dickinson L. Rev. 107; see, also, list of articles in Spector Motor Service v. O'Connor (2 Cir.), 181 F. (2d) 150, 154.[24]

[fol. 258] As has been so often stated, not all burdens upon commerce, but only undue or discriminatory ones, are forbidden. Western Live Stock v. Bureau of Revenue, *supra;* McGoldrick v. Berwind-White Co., 309 U. S. 33, 60 S. Ct. 388, 84 L. ed. 565. *Although interstate commerce must pay its way, a state cannot put a barrier around its borders to bar trade from other states and thus run contrary to the power in Congress to regulate commerce among the states.*

In Miller Brothers Co. v. Maryland, 347 U. S. 340, 74 S. Ct. 535, 98 L. ed. 744, there was no duty on an out-of-state merchant to collect and remit a tax on the use, storage, or consumption of articles, even though the vendor's advertising with papers and radio stations of its home state reached the people in the taxing state; its occasional sales circulars mailed to all former customers included customers in the taxing state; and some of the purchases were delivered in the taxing state by common carrier and some by the vendor's own trucks. There was not sufficient local incidence to sustain the taxing power.

In Norton Co. v. Dept. of Revenue, *supra*, the United States Supreme Court sustained a tax on gross receipts from all sales to persons in Illinois, except on orders sent directly by the customers to the head office and shipped

---

[24] Mr. Justice Black, concurring in Northwest Airlines v. Minnesota, 322 U.S. 292, 302, 64 S. Ct. 950, 955, 88 L. ed. 1283, 1290, said:

"These problems, it seems to me, call for Congressional investigation, consideration, and action. The Constitution gives that branch of government the power to regulate commerce among the states, and until it acts I think we should enter the field with extreme caution."

directly to the customers from the head office. *The exception made is significant because of the similarity of facts in the case at hand where orders were sent to Mason City, Iowa, for acceptance and shipment of goods f. o. b. Mason City.* The local incidents were a branch office which made local sales at retail from a limited inventory carried there, received orders and forwarded them to the head office for action there, and acted as an intermediary to reduce freight charges on goods shipped from the head office. The case is distinguishable because of the existence of a substantial retail sales outlet, not found in the instant case.

In Nippert v. Richmond, *supra,* a license tax was invalidated. The tax had been imposed upon a solicitor who [fol. 259] had been in the city for five days soliciting orders for out-of-state confirmation and shipment into the state. Notwithstanding that only casual solicitation was involved, the case is persuasive for the proposition that mere solicitation is not sufficient to uphold the application of the tax. However, because the court questions the conclusiveness of the local-incidence test, use of the case may not be well taken. The court states that local incidence will be weighed along with the danger of multiple burden taxation. The court also states that it would be possible to find local incidence in any case (327 U. S. 423, 66 S. Ct. 589, 90 L. ed. 764):

> "* * * All interstate commerce takes place within the confines of the States and necessarily involves 'incidents' occurring within each State through which it passes or with which it is connected in fact."

Included in this statement is the recognition that interstate commerce must necessarily be carried on within the states (327 U. S. 423, 66 S. Ct. 589, 90 L. ed. 764):

> "It has not yet been decided that every state tax bearing upon or affecting commerce becomes valid, if only some conceivably or conveniently separable 'local incident' may be found and made the focus of the tax. This is not to say that the presence of so-called local incidents is irrelevant. On the contrary the absence of any connection in fact between the commerce and the

state would be sufficient in itself for striking down the tax on due process grounds alone; and even substantial connections, in an economic sense, have been held inadequate to support the local tax."

Thus, the United States Supreme Court gives consideration to the operating incidence of the tax. No case has ever actually departed from the basic principle that interstate commerce cannot be taxed by the states in the absence of local or intrastate business.

In McLeod v. Dilworth Co. *supra*, the United States Supreme Court made it clear *that a tax cannot be collected by the buyer's state on orders solicited in one state, accepted in another, and shipped at the purchaser's risk. The mere solicitation of orders is not sufficient local incidence to support the tax*

[fol. 260] In Cheney Brothers Co. v. Massachusetts, *supra*, from which we have quoted, it is clearly established that a foreign corporation is not subject to taxation when it merely maintains salesmen in the taxing state who have no power to confirm orders or collect accounts, or adjust complaints. The taxpayer was a Connecticut corporation engaged in manufacturing and selling silk fabrics. It maintained a selling office in Boston with one office salesman and four other salesmen, who, like those employed by the defendant company in Minnesota, solicited and took orders subject to approval by the home office in Connecticut, and the corporation shipped goods directly to the purchasers. No stock of goods was kept in the Boston office other than samples used in soliciting and taking orders. The Boston office retained copies and records of orders taken but did no bookkeeping and made no collections. The salesmen and the office rent were paid directly from the home office, and other expenses of the Boston office were paid from a small account kept in Boston for that purpose. The corporation did no other business in the state.

In Alpha Portland Cement Co. v. Massachusetts, *supra*, heretofore alluded to, which follows the Cheney case, we have a New Jersey cement company maintaining an office in Boston, Massachusetts, *in the charge of a district sales manager* where the corporation's correspondence and other

activities in connection with the solicitation of orders could be carried on. Orders received at the Boston office were transmitted to the principal office of the corporation in Pennsylvania for acceptance. All goods and invoices were sent directly to the customer. Payments were usually made to the Pennsylvania office, but, unlike the instant case, occasionally salesmen accepted payments. No samples or other merchandise were kept in Massachusetts. Its only property in that state was its office furniture and fixtures. Salaries and office rent were paid from the home office. Unlike the instant case, an incidental-expense bank account was maintained. The activities of the Alpha Portland Cement Co. in Massachusetts were more extensive than those of the defendant company in Minnesota; yet the United States Supreme Court struck down the tax as invalid.

[fol. 261] Memphis Steam Laundry Cleaner v. Stone, *supra*, stated the function of the courts (342 U. S. 392, 72 S. Ct. 426, 96 L. ed. 439):

> *"The State may determine for itself the operating incidence of its tax. But it is for this Court to determine whether the tax, as construed by the highest court of the State, is or is not 'a tax on interstate commerce.'"* (Italics supplied.)

Whether or not solicitation of interstate business may have some semblance of being a local incident, the United States Supreme Court has not permitted state taxation of this integral part of interstate commerce. Memphis Steam Laundry Cleaner v. Stone, *supra*, and cases cited therein.

The state places a great deal of reliance on International Shoe Co. v. Washington, 326 U. S. 310, 66 S. Ct. 154, 90 L. ed. 95, in support of its position. That case is chiefly important for its holding rendering the interstate corporation amenable to suit in the state courts on the basis of a finding of certain local incidents in addition to solicitation. The imposition of the state unemployment compensation tax cannot be questioned. The commerce clause authorizes Congress to regulate interstate commerce. Congress by statute, now coded as 26 USCA §3305(a), has authorized the levying of the state unemployment compen-

sation tax. Thus, since Congress has the power to authorize such a tax, there is no basis for attacking the tax on commerce-clause grounds. The International Shoe Co. case is distinguishable because there is no similar Congressional authorization for the levying of the Minnesota tax.

The state in its argument makes a point of admitting that a tax on the privilege of engaging in interstate commerce would be unconstitutional. However, the state goes on to argue that application of an income tax under the three-factor formula may be legally and constitutionally applied, even though there is no intrastate commerce or local incidents amounting thereto. Clearly this is contrary to the admitted rule that a state cannot tax the privilege of engaging in interstate commerce. The tax here involved imposes a direct tax upon interstate commerce. *If the tax-*
[fol. 262] *payer is engaged exclusively in interstate commerce, then its imposition is violative of the commerce clause and unconstitutional. It must find intrastate commerce activity to support its imposition or it is void as a direct tax. The state definitely argues the competitive privileges and advantages taxpayer has enjoyed over the years selling its cement products to Minnesota dealers. Unless taxpayer is actually engaged in intrastate commerce as such in some form, and not engaged exclusively in interstate commerce, the state's contention without that local incidence as a base amounts to arguing for the imposition of the tax based upon the privilege, which taxpayer constitutionally enjoys free from state-tax intervention, of transacting its interstate business in the field of commerce between the states.*

The present views of the United States Supreme Court are clearly set out in Spector Motor Service v. O'Connor, 340 U. S. 602, 71 S. Ct. 508, 95 L. ed. 573. The court stated that interstate commerce cannot be taxed by the states in the absence of local or intrastate business. The dictum suggesting otherwise, in Memphis Natural Gas Co. v. Beeler, 315 U. S. 649, 62 S. Ct. 857, 86 L. ed. 1090, was repudiated. The court stated (340 U. S. 608, 71 S. Ct. 512, 95 L. ed. 578):

"• • • The incidence of the tax provides the answer. The courts of Connecticut have held that the tax be

fore us attaches solely to the franchise of petitioner to do interstate business. The State is not precluded from imposing taxes upon other activities or aspects of this business which, unlike the privilege of doing interstate business, are subject to the sovereign power of the State. Those taxes may be imposed although their payment may come out of the funds derived from petitioner's interstate business, provided the taxes are so imposed that their burden will be reasonably related to the powers of the State and nondiscriminatory.

"This Court heretofore has struck down, under the Commerce Clause, state taxes upon the privilege of carrying on a business that was *exclusively* interstate in character. *The constitutional infirmity of such a tax persists no matter how fairly it is apportioned to* [fol. 263] *business done within the state.* Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203 (measured by percentages of 'corporate excess' and net income); Ozark Pipe Line Corp. v. Monier, 266 U. S. 555 (measured by percentage of capital stock and surplus). See Interstate Pipe Line Co. v. Stone, 337 U.S. 662, 669, et seq. (dissenting opinion which discusses the issue on the assumption that the activities were in interstate commerce); Joseph v. Carter & Weekes Co., 330 U.S. 422; Freeman v. Hewit, *supra.*" (Italics supplied.)

Although the case has been criticized as applying mechanical standards in determining what is the dividing point between interstate and intrastate commerce, there is no alternative so long as there can be no tax on the privilege of doing interstate commerce. The determination of what is interstate commerce must necessarily involve the analysis and distinguishing of facts. Freeman v. Hewit, *supra.*

The dissent in the Spector case not inappropriately states that there is (340 U. S. 612, 71 S. Ct. 513, 95 L. ed. 580) "apparent need for clearing up the tangled underbrush of past cases." To reconcile all of the cases involving state taxation of interstate commerce would be a nearly impossible task. As stated before, there is comfort in recognizing that the courts consider each case on the basis of its own facts. See, Annotation, 44 A. L. R. 1228.

The state relies on a number of cases that unquestionably stand for the proposition that there can be no tax on the privilege of doing interstate business. United States Glue Co. v. Town of Oak Creek, 247 U. S. 321, 38 S. Ct. 499, 62 L. ed. 1135, held that a net-income tax was an indirect burden, thus not unconstitutionally imposed, noting that a gross-receipts tax is a direct burden. The case is distinguishable because the taxing state was the domicile of the interstate corporation. It maintained executive offices and an extensive manufacturing plant in the state of its domicile, the taxing state. No one would question the power of the state of Iowa to impose a net-income tax on taxpayer, domiciled there, yet engaged in interstate commerce, which would be the analogous situation.

[fol. 264] The power of Iowa to impose a tax on taxpayer's net income, although not to be decided here, suggests the danger of multiple taxation which is grounds for invalidation of the Minnesota tax. Western Live Stock v. Bureau of Revenue, 303 U. S. 250, 58 S. Ct. 546, 82 L. ed. 823. Taxpayer has its executive offices and manufacturing plant in Iowa. *Under the multiple-burdens test, such state taxes on interstate business are invalid as are susceptible of being imposed with equal right by other states, so that interstate commerce is required to bear a heavier burden of taxation than is intrastate commerce.*

In both Memphis Natural Gas Co. v. Stone, 335 U. S. 80, 68 S. Ct. 1475, 92 L. ed. 1832, and Interstate Oil Pipe Line Co. v. Stone, 337 U. S. 662, 69 S. Ct. 1264, 93 L. ed. 1613, a divided court upheld the imposition of a tax. The United States Supreme Court relied to some extent on the interpretation and application of the state statutory provision of "doing business" by the Mississippi Supreme Court. There was acceptance of the interpretation that the incidence of the tax was on local activities. The cases are distinguishable on the basis of finding local incidents of operation. Apparently, the United States Supreme Court has considered the pipe line cases to be best understood when taken together, even though the test is the same. In Memphis Natural Gas Co. v. Stone the court said (335 U. S. 89, 68 S. Ct. 1479, 92 L. ed. 1840):

> "* * * This Court has drawn the distinction in the field of pipe line taxation between state statutes on the privilege of doing business where only interstate business was done and those upon appropriate local incidents."

Local incidence of operation is controlling. Maintenance, repair, and manning of a pipeline was sufficient for the conclusion that the tax was on intrastate business.

Butler Brothers v. McColgan, 315 U. S. 501, 62 S. Ct. 701, 86 L. ed. 991, involved an interstate corporation which maintained one of its wholesale distributing houses in the [fol. 265] taxing state. Each of its houses maintains stocks of goods, serves a separate territory, has its own sales force, handles its own sales and all solicitation, credit, and collection arrangements in connection therewith, and keeps its own books of account. Although the court did not apply the incidence of operation rule, it is clear that the court thought there was no question but that intrastate activity was involved. There was much more than mere solicitation in the Butler Brothers case, and thus the case is distinguishable.

West Publishing Co. v. McColgan, 328 U. S. 823, 66 S. Ct. 1378, 90 L. ed. 1603, affirming 27 Cal. (2d) 705, 166 P. (2d) 861, can be distinguished from the instant case because more than solicitation was involved. The salesmen were authorized to receive payments on orders taken by them, to collect delinquent accounts, and to make adjustments in case of complaints by customers. Although these activities are closely allied with solicitation, they are nonetheless activities in addition to the activities of mere solicitation. The West Publishing Co. case may be further distinguished from the instant case because therein the taxing statute, unlike §290.03 as applied here under the apportionment formula, was limited in application to income from sources of books and periodicals delivered in the state seeking to impose the tax.

The Butler Brothers and West Publishing Co. cases, following doctrine set out in United States Glue Co. v. Town of Oak Creek, *supra*, apparently proceed on the theory that a net-income tax, even on an exclusively inter-

state business, is an indirect burden on commerce and thus valid. To so reason is to ignore the approach of determining whether there are local incidents to uphold a finding of intrastate business. To use the direct-indirect distinction is to a large extent to characterize a result. In discussing the various approaches used by the courts, one text writer [fol. 266] stated:

> "Prior to 1938, when the Court was declaring that interstate commerce was exempt from local taxation, a tax was saved by declaring that the effect of the tax on interstate commerce was 'indirect,' which is a fashion in judicial speech tantamount to the conclusion that the taxed event was not considered interstate commerce. A tax levied on the actual movement of interstate commerce, or on the privilege of engaging in, or on gross receipts from that commerce, or on the means and instrumentalities used in interstate commerce (property taxes permitted) was struck down as having a 'direct' effect or being a 'direct' burden upon the commerce, which was another way of saying that there is no local power to tax interstate commerce." Hartman, *State Taxation of Interstate Commerce: An Appraisal and Suggested Approach*, 1953 Wash. U. L. Q. 233, 241.

The local-incidents test, with a line drawn at solicitation in cases involving distribution of merchandise and goods, places emphasis on an analysis of the facts. The defendant company was careful in its operations in Minnesota. None of its activities, if we follow the Cheney, Alpha, Spector, and Memphis Steam Laundry Cleaner cases, as well as other numerous pronouncements by the United States Supreme Court, can be construed to extend beyond solicitation, nor the business thus conducted be other than exclusively interstate commerce. Nothing appears from the contentions and the arguments presented, oral or written, exhibiting extensive research by both sides, which renders the line of decisions beginning with the Cheney case inapplicable here. The doctrine therein announced has been adhered to and reaffirmed by the highest court since the advent of the Cheney case.

Notwithstanding that solicitation is an integral part of interstate business, there is alternative reasoning which could be applied to the cases already discussed. It is submitted that commerce clause grounds are better taken; however, due process under Amend. XIV requires some connection between the taxing authority and the taxpayer. A recent pronouncement by the United States Supreme Court in Miller Brothers Co. v. Maryland, 347 U. S. 340, 344, 74 S. Ct. 535, 538, 98 L. ed. 744, 748, states:

> "The question here is whether this vendor, by its acts or course of dealing, has subjected itself to the taxing power of Maryland or whether it has afforded that State a jurisdiction or power to create this col- [fol. 267] lector's liability. * * * Our decisions are not always clear as to the grounds on which a tax is supported, * * * ; nor are all of our pronouncements during the experimental period of this type of taxation consistent or reconcilable. * * * *But the course of decisions does reflect at least consistent adherence to one time-honored concept: that due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.*
>
> "* * * Certain activities or transactions carried on within a state, such as the use and sale of property, may give jurisdiction to tax whomsoever engages therein, and the use of highways may subject the use to certain types of taxation. These cases overlap with those in which incorporation by a state or permission to do business there forms the basis for proportionate taxation of a company, including its franchise, capital, income and property." (Italics supplied.)

The overriding principle evident in this case and others involving state taxing powers is that operating incidence of the tax is of primary consideration. Depending on the facts of each case, state taxing powers may or may not be exercised. As suggested, sales or use may be sufficient basis for the tax. The state of domicile, or the state in which a corporation has permission to do business, may when the required circumstances exist impose taxes. Even

the least of these, *permission to do business*, may be the subject of this tax. *Mere solicitation, however continuous, has not been held sufficient to uphold a tax such as the one sought to be imposed here in any of the cases presented or any cases discovered through independent research.*

Similar taxes have been invalidated at levels below the United States Supreme Court. In State v. American Can Co., 117 Colo. 312, 186 P. (2d) 779, a tax on the entire net income derived from business transacted within that state was invalidly applied to a corporation of another state engaged in interstate business. The facts, similar to the facts in the instant case, included solicitation by men whose orders must be accepted at one of its foreign offices for goods manufactured outside the state and delivered to points outside of the state for shipment to state customers in the taxing state. In contrast the Colorado court, a short [fol. 268] time before the decision in the American Can Co. case, had decided Cruse v. Stayput Clamp & Coupling Co., 113 Colo. 254, 156 P. (2d) 397. The latter case involved a net-income tax on a corporation domiciled in Colorado, the taxing state. The corporation maintained its executive offices and manufacturing plant in Colorado. The court upheld the imposition of the tax. It is clear from these two cases that the domiciliary state may impose its net-income tax following the line of cases coming down from United States Glue Co. v. Town of Oak Creek, *supra*. However, the state attempting to apply its net-income tax to the interstate business of a corporation not domiciled in the taxing state must find local incidents of intrastate-commerce quality sufficient to uphold the tax.

In Matter of United Air Lines v. Joseph, 282 App. Div. 48, 121 N. Y. S. (2d) 692, there is similar invalidation of a gross-receipts tax, the question being whether there were sufficient local incidents to uphold the tax. The court in that opinion stated (282 App. Div. 54, 121 N. Y. S. [2d] 698): "The Western Live Stock case is misunderstood if one fails to note in reading the last two paragraphs quoted that in order to apportion a privilege tax on interstate commerce there must first be some local or intrastate commerce. Mr. Justice Stone so states, the authorities cited by him and omitted from the quotation, so held expressly,

or involved such factual support for their holding." It may be remembered that the Western Live Stock case is frequently cited as authority for a nondiscriminatory tax on interstate commerce. Nevertheless, as recognized by the New York court, there must be connection with the taxing state so as to support a finding of intrastate commerce. A case decided at the same time as the United Air Lines case, and relying thereon for similar finding of an invalid application of the tax, is Matter of United Piece Dye Works v. Joseph, 282 App. Div. 60, 121 N. Y. S. (2d) 683, wherein the court held that the mere selling of merchandise or [fol. 269] services in a state other than one in which seller was located did not subject seller to tax jurisdiction in such other state.

For further support, see Farwell, Ozmun, Kirk & Co. v. Wallace, 45 N. D. 173, 177 N. W. 103, where a tax was held to be invalidly levied directly on the proceeds in the taxing state arising out of interstate commerce of a corporation not engaged in doing intrastate business.

A most recent pronouncement made by a state court, based upon a state of facts similar in many respects to that which presently confronts us, is to be found in Commonwealth v. Eastman Kodak Co., 385 Pa. 607, 124 A. (2d) 100. In that case the judgment of the lower court that a foreign manufacturer of photographic equipment, which had no tangible property in Pennsylvania except salesmen's automobiles and no office or place of business in Pennsylvania and was not registered to do business in the state and made no contracts therein, was not subject to the corporation income tax was affirmed by the Pennsylvania Supreme Court. The court held that the imposition of the tax on the corporation constituted a violation of the interstate commerce clause because it attempted to tax local business activities which were an integral part of the interstate flow of commerce that could not be separated from it. The persuasiveness of the Pennsylvania decision cannot be ignored. The Pennsylvania act under consideration openly states in the face of the commerce clause "A rule shall not be deemed to be inapplicable merely because all the tangible property or the expenditures of a corporation for wages, salaries, commissions or other compensa-

tion, or the gross receipts of the corporation, are found to be situated, incurred or received without the Common- [fol. 270] wealth." 72 Purdon's Penn. Stat. Ann. (Perm. ed.) §3420n-2. The Pennsylvania court characterizes this statement of its statute as indicating the true nature of the tax. The Minnesota act in the instant case does not expressly state that it attempts to tax on the basis of outstate factors, thus the cases might be distinguished on the basis of the acts; however, as recognized by the recent Pennsylvania decision, relying upon cases cited from the Pennsylvania Supreme Court and the United States Supreme Court, the substance and not the form will control, i. e., the nature of a tax depends upon its incidence, not upon its label. The Pennsylvania court reached the conclusion that in the absence of incidence on local operation which was not an integral part of interstate commerce the tax was invalidly imposed and that their Corporation Income Tax Law of 1951 in its application to the defendant therein was a violation of the interstate commerce clause and therefore unconstitutional.

The only marked dissimilarity in the facts in the latter case and the case at bar is that in the Pennsylvania case the defendant maintained no local office in the state from which its three resident salesmen operated, one of whom performed all of his services in Pennsylvania, and the fact that the Eastman Kodak Co. employed, besides its resident salesmen, 11 technical representatives who resided in Pennsylvania and who demonstrated to dealers and other users of photographic products the proper method to be employed in using defendant's products, four of whom confined their services within the state, the others performing services within the state and other states. Its tangible property in the state consisted of 10 automobiles, valued at $13,569. The comparison as to tangibles may be made by referring to the statement of facts in the instant case where taxpayer owned five automobiles and a small amount of office furniture in a three-room office, requisitioned, arranged for, and financed through the home office. In Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203, 45 [fol. 271] S. Ct. 477, 69 L. ed 916, petitioner corporation maintained an office in the taxing state in charge of a dis-

trict sales manager. In the Pennsylvania case the taxing authorities sought to levy what purported to be a net-income tax based upon the operation of a three-fold formula not unlike what was done in the case at bar. The Pennsylvania court in discussing the manner of application of the three-fold formula to the facts of the case said (385 Pa. 615, 124 A. [2d] 103):

> "Notwithstanding the fact that the Act seeks to impose what it calls a property tax, it is clear that the tax, *at least as far as the present defendant is concerned, is an excise tax for the privilege of doing business in Pennsylvania.* Cf. Roy Stone Transfer Corp. v. Messner, 377 Pa. 234, 103 A. (2d) 700, supra. The formula which the Commonwealth applies to this defendant makes crystal clear, if it were not otherwise so, that this tax is not a property tax on the local property of defendant, namely, ten automobiles or on the income from local activities as such—*it is an attempted excise tax on defendant's interstate commerce business out of which there were no local activities which could be considered as not an integral or realistically inseparable part of interstate commerce.*" (Italics supplied.)

We cite for purposes of illustration and comparison Matter of Gulf Oil Corp. v. Joseph, 307 N. Y. 342, 121 N. E. (2d) 360. An examination of this case indicates that the primary problem was the application of the apportionment formula. The court in that case accepted without question the finding that the taxpayer carried on substantial local intracity and intrastate sales activities as well as interstate business.

Since we have a tax on sales, made from a foreign corporation's (taxpayer's) business establishment and manufacturing plant outside of the state and shipped on order solicited in the state to state customers by rail (common carrier), f. o. b. Mason City, Iowa, pursuant to prices quoted to customer at mill site rate, plus freight, and since the taxpayer's activities in the state form an integral part of its interstate activities, with all revenues received by it from customer sales in the state resulting from its opera-

tions in interstate commerce, the tax assessed in the instant case is a tax upon the net income of a corporation [fol. 272] whose business is exclusively that of foreign commerce or interstate commerce, or both, and therefore in contravention of the commerce clause, U. S. Const. art. I, §8, clause 3.

The state taxing statute, M. S. A. 290.03, for the reasons stated, is in its application to taxpayer, here, upon the facts submitted, a violation of the interstate commerce clause and therefore unconstitutional.

Stress has been laid, in the majority opinion, on McGoldrick v. Berwind-White Co. *supra*, as authority for the claim that upon the factual situation presented in the instant case a tax may be levied on taxpayer's net income wholly derived from interstate commerce. In that regard reference is made especially to the statements of the court in the McGoldrick case that (309 U. S. 47, 60 S. Ct. 392, 84 L. ed. 570) "A tax may be levied on net income wholly derived from interstate commerce. Non-discriminatory taxation of the instrumentalities of interstate commerce is not prohibited." These statements derive from the definite factual situation existing in that case and from the cases cited by the court in support of the conclusions reached regarding the application of the tax situation there presented. The taxpayer sold coal to New York public utility and steamship companies, being a Pennsylvania corporation engaged in mining coal in the latter state. The tax involved was a 2 percent tax upon receipts from every sale of tangible personal property sold within the city of New York. It was a tax laid upon every purchaser within the state, of goods sold for consumption, regardless of whether they had been transported in interstate commerce. Mr. Justice Stone, speaking for the majority of the court in that case, however, recognized the limitations imposed by the commerce clause and made it clear that certain types of taxation, by the states, are ruled out through the immunity afforded by the commerce clause. That statement is as follows (309 U. S. 48, 60 S. Ct. 393, 84 L. ed. 571):

"Certain types of tax may, if permitted at all, so [fol. 273] readily be made the instrument of impeding

> or destroying interstate commerce as plainly to call for their condemnation as forbidden regulations. Such are the taxes already noted which are aimed at or discriminate against the commerce or impose a levy for the privilege of doing it, or tax interstate transportation or communication or their gross earnings, or levy an exaction on merchandise in the course of its interstate journey. Each imposes a burden which intrastate commerce does not bear, and merely because interstate commerce is being done places it at a disadvantage in comparison with intrastate business or property in circumstances such that if the asserted power to tax were sustained, the states would be left free to exert it to the detriment of the national commerce."

It was held that the 2 percent tax laid upon every purchaser within the state, as applied to the Berwind-White Company, was without the possibility of such consequences. In that case taxpayer had asked the state courts to rule that the tax act did not apply to coal transactions which was the selling of coal to New York consumers for plants and steamships, particularly because the enabling statute expressly prohibits the city from imposing a tax upon (309 U. S. 58, 60 S. Ct. 399, 84 L. ed. 578) "any transaction originating and/or consummated outside the territorial limits of the City." This question had been left unanswered by the state court which had wholly rested its decision on constitutional grounds. Upon a reversal and remand of the case, the United States Supreme Court in its opinion said (309 U. S. 59, 60 S. Ct. 399, 84 L. ed. 578):

> "Upon the remand of this cause for further proceedings not inconsistent with this decision, the state court will be free to decide the state question, and the remand will be without prejudice to the further presentation to this Court of any federal question remaining undecided here, if the state court shall determine that the taxing statute is applicable."

In Freeman v. Hewit reference was made to the Berwind-White case as follows (329 U. S. 257, 67 S. Ct. 279, 91 L. ed. 274):

"It has been urged that the force of the decision in [fol. 274] the Adams case has been sapped by McGoldrick v. Berwind-White Co. * * *. The decision in McGoldrick v. Berwind-White was found not to impinge upon 'the rationale of the Adams Manufacturing Co. case,' and the tax was sustained because it was 'conditioned upon a local activity, delivery of goods within the state upon their purchase for consumption.'"

Mr. Chief Justice Hughes, dissenting in the McGoldrick case, again made clear the principle which has been maintained throughout the years that the states cannot lay a direct tax upon interstate commerce. I am unable to agree that the McGoldrick case is controlling on the issues before the court in the case at bar. The case before us is one of interstate commerce in its most obvious form. We have here the imposition of a burden which intrastate commerce does not bear, and merely because interstate commerce is being done, places it at a disadvantage in comparison with intrastate business or property in circumstances such that if the asserted power to tax were sustained, the states would be left free to exert it to the detriment of the national commerce.

The tax will not be saved if it directly burdens interstate commerce. Adams Mfg. Co. v. Storen, 304 U. S. 307, 58 S. Ct. 913, 82 L. ed. 1365.

Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the state. Robbins v. Shelby County Taxing Dist., 120 U. S. 489, 7 S. Ct. 592, 30 L. ed. 694; Cooney v. Mountain States T. & T. Co., 294 U. S. 384, 55 S. Ct. 477, 79 L. ed. 934.

It has been said heretofore that a desirable, just, and general scheme for raising revenues might well be reached through the cooperation of the Federal government and the states so as to avoid the differentiations which beset the application of the commerce clause and at the same time protect both state and national governments in the difficult field of general taxation. The consideration of such a policy belongs in the legislative field and is for the [fol. 275] Congress and not for the courts. So far Con-

gress has not seen fit to lift or set aside the duty of maintaining the immunity of the interstate commerce clause as the Constitution prescribes. We cannot lightly brush aside the statement made by Mr. Chief Justice Hughes in his dissent in the McGoldrick case (309 U. S. 69, 60 S. Ct. 404, 84 L. ed. 583):

> "* * * That immunity still remains an essential buttress of the Union; and a free national market, so far as it can be preserved without violence to state power over the subjects within state jurisdiction, is not less now than heretofore a vital concern of the national economy."

If the immunity afforded by the interstate-commerce clause applies in the instant case as contemplated by the Federal Constitution, then the within tax has been imposed, no matter by what name it is designated, without authority on the part of the state to do so.

I think the judgment entered against defendant taxpayer in the court below should be reversed.

Martin A. Nelson

[fol. 276] Frank T. Gallagher, Justice (dissenting).

In the instant case the trial court found that the defendant corporation's "activities in this state were an integral part of its interstate activities, and all revenue received by it from customers in Minnesota resulted from its operations in interstate commerce."

In its memorandum made a part of the decision the court said: "Obviously this tax is a tax upon the net income of a foreign corporation whose business is exclusively that of foreign commerce or interstate commerce or both." There was evidence to sustain such a finding and statement.

The majority appear to take the position, however, that the business which defendant did in Minnesota is large enough that it has become in effect a local business. It seems to me that the fact that the shipments into this state are extensive cannot change the nature of the business from that of interstate commerce, as found by the trial court, to intrastate commerce and thus form the basis of a finding of local activities upon which to sustain this tax.

In determining the constitutionality of a state tax on a foreign corporation's net income, it is necessary to distinguish those situations where the coporation (sic) is carrying on both intrastate or local business and interstate commerce in the taxing state from those situations where the corporation does only interstate business and all of its activities in the taxing state are therefore an integral part of interstate commerce.

From the holding in Spector Motor Service v. O'Connor, 340 U. S. 602, 71 S. Ct. 508, 95 L. ed. 573, a state tax, if reasonably measured, would be valid where the foreign corporation is engaged in both interstate and intrastate commerce in the taxing state but would be void as violating the commerce clause where such a corporation does purely an interstate business and all of its activities in the taxing state are an integral part of interstate commerce. Here we have a situation where it is undisputed from the court's findings that the activities of the defendant corporation in Minnesota are an integral part of its interstate activities; where all its revenue from Minnesota customers [fol. 277] resulted from its operations in interstate commerce; and where, according to the court's memorandum, the tax is on the net income from business exclusively that of interstate commerce.

In Cheney Brothers Co. v. Massachusetts, 246 U. S. 147, 38 S. Ct. 295, 62 L. ed. 632, and Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203, 45 S. Ct. 477, 69 L. ed. 916, decided prior to the Spector case, the United States Supreme Court held invalid a Massachusetts tax on the net income of foreign corporations which were engaged only in interstate commerce in that state. As I see it, the Spector case reaffirmed the principle laid down in the Alpha and Cheney cases that a state cannot tax the net income produced by a corporation engaged solely in interstate commerce.

In view of the trial court's findings in the instant case and the holdings in the Spector, Alpha, and Cheney cases, I cannot agree with the majority that the attempted imposition of the tax here can be sustained. It seems to me that both the facts and taxing statutes involved in the Alpha case bear a close resemblance to the one before us.

In that case the State of Massachusetts attempted to impose a 2½ percent tax on that part of the company's net income derived from the business carried on in that state, not less than a tax of .05 percent on the corporation's net worth allocable to Massachusetts. In holding the tax invalid under the commerce clause, the United States Supreme Court said (268 U. S. 217, 45 S. Ct. 480, 69 L. ed. 923): "Here also the excise was demanded on account of interstate business. A new method for measuring the tax had been prescribed, but that cannot save the exaction. Any such excise burdens interstate commerce and is therefore invalid without regard to measure or amount."

It appears to me that McGoldrick v. Berwind-White Co., 309 U. S. 33, 60 S. Ct. 388, 84 L. ed. 565, is distinguishable from the case at bar. That was a proceeding to review a determination of the comptroller of New York City assessing a New York City retail sales tax deficiency against a Pennsylvania corporation. The question for considera- [fol. 278] tion there was whether the New York City tax laid upon sales of goods for consumption as applied to the company infringed the commerce clause of the Federal constitution. As I see it, that case involved only a tax on sales of goods for consumption imposed by New York City where the merchandise was to be used and is not the same situation as here.

West Publishing Co. v. McColgan, 328 U. S. 823, 66 S. Ct. 1378, 90 L. ed. 1603, affirming 27 Cal. (2d) 705, 166 P. (2d) 861, also is distinguishable. While the facts in that case are not set forth in the per curiam opinion of the United States Supreme Court, the California Supreme Court based its decision upon the finding that there were local activities. In that case the West Publishing Company maitained (sic) a stock of merchandise within the State of California. Its salesmen had authority to make and did make adjustments and collect delinquent accounts. With reference to its local activities the California Supreme Court had this to say (27 Cal. [2d] 707, 166 P. [2d] 862):

> "* * * During this time it had four regularly employed solicitors in this state who devoted their entire time to plaintiff's business. Its California employees were authorized to receive payments on orders taken

by them, to collect delinquent accounts, and to make adjustments in case of complaints by customers. The employees were given space in the offices of attorneys in return for the use of plaintiff's books stored in such offices."

No such local incidents are present here as the defendant company kept no stock of merchandise in Minnesota. All orders were sent directly to the foreign office and all orders were approved and collections and adjustments made out of that office. Rather it appears to me that defendant here has operated along the methods found in the Alpha and Cheney cases where the attempted tax was invalidated because of lack of local activities.

In conclusion, it is my opinion, under the record here, that the activities of the defendant company in Minnesota [fol. 279] were an integral part of its interstate commerce; that its Minnesota revenues resulted from its operation in interstate commerce; and that the attempted tax is on the net income of a business exclusively engaged in interstate commerce and therefore cannot stand.

For the reasons set forth I respectfully concur in the dissent of Mr. Justice Nelson.

Frank T. Gallager

[fol. 280] STATE OF MINNESOTA

IN SUPREME COURT

STATE OF MINNESOTA, Respondent,

v.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY, Appellant.

PETITION FOR REARGUMENT—Filed July 25, 1957

Northwestern States Portland Cement Company hereby petitions for reargument of the constitutional issues here-

tofore presented to this Court by said petitioner and as further developed in this petition for reargument, on the grounds that:

1. The majority opinion incorrectly adopts a construction of Minnesota Statutes, Section 290.03 which is contrary to the express language of the statute, which construction was not heretofore argued by either party.

2. The majority opinion incorrectly decides important Federal constitutional questions of great public interest which deserve further consideration by the Court.

[fol. 281] In view of the comprehensive and excellent analysis of the cases set forth in the dissenting opinions of Justice Nelson and Justice Gallagher, no attempt will be made here to restate matters discussed in those dissents.

In its opinion, the majority upholds the validity of this tax as levied under Section 290.03, Minnesota Statutes. That section provides in part as follows:

> "An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:
>
> "(1) Domestic and foreign corporations not taxable under section 290.02 which own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both; * * *."

The regulations promulgated by the Commissioner of Taxation of the State of Minnesota are as follows:

> "All corporations, domestic or foreign, whose business within this State during any taxable year consists exclusively of interstate commerce, are subject to a tax imposed directly upon their taxable net income under the provisions of M.S.A. 290.03 (1). This provision requires the imposition of a tax on the net income from interstate commerce or foreign commerce assignable to Minnesota."

[fol. 282] A mere reading of the statute in connection with the Commerce Clause compels the conclusion that the statute is void on the face of it, for the decisions are clear that no state can tax income produced exclusively in interstate commerce unless there is something more than just that commerce in the taxing state. This Court, then, apparently in an effort to escape that dilemma, rationalizes that when interstate commerce becomes extensive, it, in effect, then becomes localized. This certainly is a new concept as to what constitutes "local activities". Assuming, arguendo, that interstate commerce when extensive becomes localized, then the tax here assessed should have been levied under Section 290.02, Minnesota Statutes, and not under Section 290.03.

Section 290.02 provides as follows:

> "An annual tax is hereby imposed upon every domestic corporation, except those included within Section 290.03, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within section 290.03, for the grant to it of the privilege of transacting or for the actual transaction by it of any *local business* within this state during any part of its taxable year, in corporate or organized form." (emphasis supplied)

It will be noted that under the above section, an annual tax is imposed upon "every • • • foreign corporation • • • [fol. 283] for the actual transaction by it of any *local business* within this state during any part of its taxable year • • • •". If the taxpayer here had been engaged in local activities, then clearly the tax would have been levied under Section 290.02. It was not until the opinion of this Court was rendered that there was any assertion by anyone, including the state taxing authorities, that there was any "*local business*" carried on by the Northwestern States Portland Cement Company. Unquestionably had the taxing authorities been of the view that there was local business or local activities, the assessment would have been made under Section 290.02, which specifically provides for a tax in those cases.

Therefore it would appear that this Court, in order to uphold the validity of the tax levied under Section 290.03, has interpolated into the statute words not supplied by the Legislature. As applied in this case, it would appear that Section 290.03 now has been construed to mean that an annual tax will be imposed upon the net income of foreign corporations whose business within this state "consists exclusively of interstate commerce" when "that commerce, although exclusively interstate, is so extensive it has become localized". No support can be found in the history of the Act for this interpretation. The Commissioner of Taxation's own regulations are to the contrary. Both the statute and the regulations provide that the tax shall be levied on income from commerce that admittedly is exclusively in- [fol. 284] terstate, completely devoid of the "local business" requirement of Section 290.02. On the face of it, such a levy is invalid. The statute is clear and unambiguous. It leaves no room for judicial interpretation.

The majority opinion suggests that the tax in question is not an excise or privilege tax imposed upon the privilege of doing interstate business but rather is purely a net income tax "wholly unrelated to the privilege of engaging in interstate commerce." That view ignores completely, however, the language of Section 290.03 which unequivocally provides that the tax is imposed upon corporations "whose business within this state during the taxable year *consists exclusively of foreign commerce*, interstate commerce, or both." (emphasis supplied)

At the same time as it insists that the tax in question is unrelated to the defendant's privilege of doing interstate business, the majority recognizes that the tax could not be imposed against defendant but for its activities within the state promoting its interstate business. Thus, notwithstanding the majority opinion's verbal disavowal of such an end, the defendant company none the less is subject to the tax in question solely because it exercised its privilege of doing interstate business in Minnesota, a privilege which this state does not grant and is powerless to regulate or restrain.

The majority opinion seeks to avoid the dilemma created by its reasoning by asserting that the defendant, although

engaged solely in carrying on interstate business, has sub-
[fol. 285] jected itself to taxation by carrying on income producing activities and transactions which have become "localized" and have become "separated from the flow of interstate commerce." There is, however, no suggestion by the majority how these activities became separated from the flow of interstate commerce or how they become "localized."

The majority opinion would impose a tax on defendant's activities merely because a substantial part of defendant's gross sales were made to Minnesota customers, notwithstanding the fact that the activities were solely and exclusively to promote interstate business. In effect then if a foreign corporation sends in but one or two salesmen and only 10% of its total sales are to Minnesota customers presumably there would be no tax, but if the foreign corporation sends in four or five salesmen, and as a result 48% of its total sales are to Minnesota customers, there is a tax even though the activities involve no intrastate business. It is difficult to perceive just why volume alone would change the character of business from interstate to intrastate. The Due Process Clause and the Commerce Clause of the Federal Constitution prohibit the state from taxing the interstate activities, and the vice in such a tax is not removed merely because such interstate activities are extensively carried on within the state.

This case differs materially from the *Northwestern Consolidated Milling Company* v. *Commonwealth of Massachusetts* (see *Cheney Bros. Co., et al.* v. *Commonwealth of* [fol. 286] *Massachusetts*, 246 U.S. 147, 38 S. Ct. 297), relied upon by the majority. There, the salesmen for the milling company took orders from retailers for a wholesaler doing only intrastate business within the State of Massachusetts. The wholesaler maintained the stock of merchandise within the state, as did the milling company from which deliveries were made within the state. There was not, as was true here, "any approval of the orders by the home office." (See opinion of the Supreme Judicial Court of Massachusetts, 218 Mass. 558, 106 N.E. 310-317). It is obvious that the facts in the *Northwestern Consolidated Milling Company* case, supra, were completely different than they are here.

No such local activities exist here as were found there. In fact the record here clearly indicates that the operations of Northwestern States Portland Cement Company in Minnesota patterned every detail of its operations after those found in the *Alpha* case and the *Cheney Brothers* case. In both of those cases the attempted imposition of a tax by Massachusetts was struck down because there were no local activities in that state.

West Publishing Co. v. *McColgan*, 328 U.S. 823, 66 S. Ct. 1378, is easily distinguishable. In that case the facts were that West Publishing Co. maintained a stock of merchandise within the State of California; its salesmen were authorized to and did make adjustments; they even collected delinquent accounts. Such activities, of course, con- [fol. 287] stitute intrastate business on which the state could and did validly levy a tax. No such local incidents, however, are present here.

Support for the views of the majority here is sought from statements in the opinion of *McGoldrick* v. *Berwind-White Coal Mining Co.*, 309 U.S. 33, 60 S. Ct. 388 (1940). The majority opinion fails to recognize that the *Berwind-White* case was decided in 1940, long prior to the final decision in the *Spector Motor Service* case. In fact when the *Spector* case was before the Court of Appeals for the Second Circuit in 1944 (139 F. 2d 809), that Court also placed great reliance upon *Berwind-White* with, however, one significant difference. That significant difference was that Circuit Judge Clark recognized that the Supreme Court of the United States had not, as of that date (1944), permitted state taxation of net income produced solely from interstate commerce activities.

In the *Spector* case, Judge Clark, directly after citing *Berwind-White* made the following observation:

> "When, however, a corporation is engaged within a state solely in interstate commerce, it must be conceded frankly, and this is the basis of the thoughtful conclusion of the court below, that the Supreme Court to date has held it immune from net income taxation by that state."

Nevertheless this Court, in direct contravention of the views of the United States Supreme Court as expressed [fol. 288] by Judge Clark, (and thereafter reaffirmed by the Supreme Court again in its *Spector* decision) now enunciates the rule that a corporation whose net income is solely derived from interstate commerce is not immune from income taxation by the state. Judge Clark, in his opinion, although recognizing that both *Alpha* and *Cheney* barred any tax on "net income" produced exclusively from interstate commerce, was then of the view, however, that certain doctrinal trends appearing in intervening decisions had impaired the authority of both *Alpha* and *Cheney*. The danger involved in such thinking was pointed up by Judge L. Hand, in his dissenting opinion in the *Spector* case, wherein he stated in part:

> "• • • Up to the present, so far as I can see, the immunity of interstate commerce from such taxation as such has rested upon the same considerations which still prevail as to the immunity of an activity of the United States" (See page 823 of opinion).

Judge L. Hand clearly sets forth the rule that activities consisting only of interstate commerce are just as immune from state taxation as an activity of the United States itself.

Whether or not we agree with the philosophy of the decisions of the United States Supreme Court is not the point. The fact is that when the *Spector* case reached that Court for its final determination—many years after *Berwind-White*—the views expressed by Judge Clark, namely, [fol. 289] that state taxation of net income produced by a corporation engaged solely in interstate commerce with no local incidents except the commerce itself, is subject to tax, were repudiated. *Alpha* and *Cheney* and the governing principles therein were expressly reaffirmed. Whether or not the tax is fairly apportioned is unimportant for the Supreme Court in *Spector* there said:

> "The constitutional infirmity of such a tax persists no matter how fairly it is apportioned • • • "

The *Berwind-White* case involved nothing more than a sales tax. It was no different than if Minnesota placed a sales tax on cement shipments to points within this state. If Minnesota did adopt such a sales tax, no one now would even question its constitutionality. The Supreme Court of the United States sustained the sales tax in *Berwind-White* as a tax "conditioned upon a local activity"—namely—"delivery of goods within the state upon their purchase for consumption." (309 U.S. 33, 58; 60 S. Ct. 388, 398). Since *Berwind-White* was decided, the language found in the opinion of that case has been carefully circumscribed by the Supreme Court. It cannot now be cited as authority in support of a tax on interstate commerce as distinguished from local; commerce or activities.

Thus, in *Joseph v. Carter & Weekes Stevedoring Co.*, 330 U.S. 422, 67 S. Ct. 815 (1947), the Court struck down [fol. 290] as violative of the Commerce Clause a tax on the gross receipts of a stevedoring company. The Court squarely met the contention that under the *Berwind-White* decision the tax was constitutional. In doing so the Court stated (67 S. Ct. 815, 819):

> "* * * where the taxable event is considered sufficiently disjoined from the commerce, it is thought to be a permissible state levy [citing Berwind-White]. This result generally is reached because the local incident selected is one that is essentially local and is not repeated in each taxing unit."

And at 67 S. Ct. 820, the Court further observed:

> "When we examine the Berwind-White tax on the purchasers of tangible personal property for consumption, there is the same reliance upon the local character of the sale."

In *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 170, 74 S. Ct. 396, 403 (1954), the Court again had occasion to observe that *Berwind-White* involved a tax on a local activity which was not a part of interstate commerce.

The Court stated with reference to *Berwind-White*:

> "Also distinguishable is McGoldrick v. Berwind-White Coal Mining Co., 1940, 309 U.S. 33, 60 S. Ct. 388, 84 L. Ed. 565, involving a tax on the sale of goods for consumption, imposed by the city in which the goods had come to rest. The Court there found that commerce, as to the goods, had ended prior to the taxable [fol. 291] event, and likened the tax to an ad valorem one on property."

All revenues of Northwestern States which the state here seeks to tax were produced from, and all activities were and are an integral part of interstate commerce. There are no local activities as such here as distinguished from interstate commerce. The lower court found none and so made its unchallenged finding. There is not even any dispute as to these facts. There is no claim that the revenue which the state seeks to tax was produced after the goods moving in interstate commerce had come to rest. As the Supreme Court pointed out in *Spector* "The incidence of the tax is upon no intrastate activities because there are none."

This Court in its majority opinion makes the following assertion:

> "Taxpayer contends, however, that since the rendition of the decision in Spector Motor Service v. O'Connor, 340 U.S. 602, 71 S. Ct. 508, 95 L. ed. 573, no tax, even though it be fairly apportioned and nondiscriminatory, may be levied on the net income of a foreign corporation engaged exclusively in interstate commerce."

It is submitted that taxpayer has never made any such claim. For instance, on page 17 of taxpayer's reply brief, submitted before oral argument was had, the following statement was made:

> "Appellant [taxpayer] does not claim that there are [fol. 292] no situations in which a state can impose a tax measured by net income on an exclusively interstate commerce taxpayer. * * * "

There is no question that net income produced from interstate commerce may be the measure of a tax imposed by a state—provided, always, however, and this is an absolute prerequisite—that something more than interstate commerce can be found—namely some local contact with the taxing state.

As the taxpayer pointed out in its reply brief:

> "However, before such a tax can be constitutionally levied, the taxing state must afford some privilege or protection which the commerce clause would permit it to withhold if it elected to do so.
>
> "Thus, for example, Minnesota is permitted to levy a gross earnings tax against railroads doing an interstate business in Minnesota (Minnesota Statutes, Chap. 295). The subject matter of that tax, however, is not the right of the railroad to do interstate business in this state or to earn income therefrom, but the right to own and peacefully possess under the police protection of the state, real and personal property in Minnesota * * *. Cudahy Packing Co. v. State of Minnesota, 38 S. Ct. 373, 246 U. S. 45; Great Northern Railway Co. v. State of Minnesota, 49 S. Ct. 191, 278 U S 503. So too might a state income tax levy on a corporation doing solely interstate business be sustainable if the corporation be incorporated under the laws of the taxing state so that its very privilege of existing [fol. 293] is granted by the State and therefore a valid subject of the State's taxing power. See United States Glue Company v. Oak Creek, 247 U.S. 321, 38 S. Ct. 499 (1918)."

The *Oak Creek* case is a perfect example of the right of a state to tax interstate commerce. There, however, the taxing state, that is, Wisconsin, was the domiciliary state—and gave the corporation its franchise—its very existence. Here Minnesota has given the taxpayer nothing—for its right to sell in the state of Minnesota, is a privilege granted to it by the Federal Constitution—not by Minnesota.

The importance of the need for the protection granted by the Commerce Clause is pointed up in the considerable

amount of publicity that has been given this case. Some of that publicity demonstrates the very reason why our founding fathers insisted upon the Commerce Clause being a part of the Federal Constitution. Thus, for example, in a recent editorial entitled "Landmark Tax Case" in the Minneapolis Star (June 28, 1957) the editor made the following observations respecting this case:

> "For Minnesota, a favorable decision in the highest court will mean more revenue. In the view of some officials, it probably also will mean the establishment of more business branches in this state by outside companies which have shunned such branches to avoid paying the Minnesota income tax. If they must pay the tax anyway, they may change their policy on branch establishments."

[fol. 294] It is that type of reasoning that brought about the adoption of the Commerce Clause as part of the Constitution. The author of that editorial however, also emphasized that if Minnesota can impose a tax on business engaged in interstate commerce, other states likewise may very well adopt retaliatory legislation, for the editor states:

> "California has an income tax law which similarly applies to outside businesses, and other income tax states probably will consider such provisions if the Minnesota law is upheld."

The Commerce Clause was obviously adopted to prevent just such interference with the free flow of commerce between the states. That is why the United States Supreme Court has so jealously guarded this provision of the Constitution, without which commerce between the states would cease. Obviously states such as Minnesota, instead of receiving more revenue as some seem to think it would, instead will, if retaliatory legislation is adopted by other states, actually lose tax revenue. Minnesota is an exporting state. Its industries rely greatly on customers outside of its borders.

Certainly our legislators never intended that our taxing statutes be interpreted in a manner that would invite re-

taliatory tax statutes from the entire nationwide area wherein Minnesota enterprises export their products out of this state. Minnesota is an exporting state relying principally on customers in other states for its business exist-
[fol. 295] ence, for as Professor Lewis states in his recent comprehensive study:

> "There is a steady flow of trade across the borders of the State of Minnesota which approximates 135 million tons annually. Three-fourths of this traffic is outbound and one-fourth is in-bound." (Minnesota Interstate Trade, Edwin H. Lewis, University of Minnesota Studies in Economics and Business, The University of Minnesota Press, Nov. 16, 1953).

According to the same study 97,209,000 tons of interstate trade originated in Minnesota in 1950 and only 35,306,000 tons terminated here. In carload shipments by rail alone in the same year 42,435,600 tons originated here for points outside and only 18,028,000 tons terminated in this state. See: ICC Carload Waybill Analysis, Table I, Appendix, Minnesota Interstate Trade by Professor Edwin H. Lewis.

It is this flow of commerce between the states that the United States Supreme Court has said cannot be interrupted, impeded, or taxed by a state. To do so would create the same type of trade barriers that has for years retarded normal industrial progress between the European countries.

It is perhaps needless to point out, as the study of Professor Lewis indicates, that Minnesota has many well known national manufacturing companies whose product obviously is not all marketed in Minnesota, but quite to the contrary the greater bulk of that product is marketed else-
[fol. 296] where. If the Commerce Clause is to be construed as has been done in this case, then obviously it would be to the advantage of national manufacturing companies who otherwise would build or expand their plants in Minnesota, to build and expand those plants in those localities where they have their market. Certainly other states can tax interstate commerce originating in Minnesota and

marketed in those states if this state can tax such commerce originating in another state, as this decision has held. The Commerce Clause was designed to prevent this sort of thing from happening.

It is submitted that the petition for reargument should be granted, or in the alternative that the decision should be reconsidered.

Respectfully submitted,

Joseph A. Maun, William R. Busch, 425 Hamm Building, St. Paul, Minnesota, Earl Smith, First National Bank Building, Mason City, Iowa, Attorneys for Appellant.

Of Counsel:

Bundlie, Kelley and Maun, 425 Hamm Building, St. Paul, Minnesota, Smith & Beck, First National Bank Building, Mason City, Iowa.

[fol. 296a] [File endorsement omitted]

Proof of service (omitted in printing).

[fol. 296b] [File endorsement omitted]

[fol. 296c] STATE OF MINNESOTA

IN SUPREME COURT

STATE OF MINNESOTA, Respondent,

v.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY, Appellant.

ANSWER TO PETITION FOR REARGUMENT—Filed August 27, 1957

The petitioner, Northwestern States Portland Cement Company, petitions for reargument on the grounds that:

(1) The majority opinion incorrectly adopts a construction of *Minnesota Statutes,* Section 290.03, which is contrary to the express language of the statute, which construction was not heretofore argued by either party.

(2) The majority opinion incorrectly decides important Federal constitutional questions of great public interest which deserve further consideration by the Court.

We submit that the petitioner has failed to present any new authority or any argument which was not previously advanced and therefore its petition for reargument should be denied.

[fol. 296d] With respect to the first issue the petitioner confuses "local business" with "localized activities and transactions" which the Court uses in discussing the due process requirements. We are unable to find any place where the Court stated that the petitioner was carrying on a "local business" within Minnesota. Although the Court has repeatedly said the petitioner's activities within Minnesota have been exclusively interstate commerce, it had to take into consideration its local activities in deciding the due process question.

As has been stated in the respondent's brief at page 27:

> "In considering whether a particular tax is to fall under the due process clause, the question for determination is whether the tax as imposed taxes values beyond the territorial jurisdiction of the state imposing the tax. Thus, does the tax have any relation to opportunities, benefits, or protection conferred or afforded by the taxing state?"

The petitioner in its (appellant's) brief also admitted that local activities are an issue in the due process question, when it stated on page 28:

> "This statute (Section 290.02) purports to lay a tax on the net income of a foreign corporation engaged exclusively in interstate commerce. An analysis of the decisions makes it clear that before a state can tax a foreign corporation engaged in interstate commerce, it must find some local activities of the cor-

[fol. 296e] poration which are sufficient to bring the foreign corporation within the taxing power of the state. In the absence of any such local incidents, the state has no local grip on the company and the attempted imposition of taxes on it is a taking of property without due process of law and accordingly void."

The Court, in its analysis of the due process objection, in discussing the income producing activities in this state repeatedly referred to them as "localized activities and transactions within the state".

On pages 9 and 10 of its decision, the Court stated:

"A non-discriminatory state tax upon the net income of a foreign corporation engaged *solely* in interstate business, which is fairly apportioned to and measured by that part of the net income which is derived from business done within the state, contravenes neither the due process clause nor the commerce clause, where the incidence or subject of the tax is not the privilege of either engaging in, or continuing to engage in, interstate commerce, but is instead those income-producing activities and transactions which, though indirectly related to interstate commerce, have become separated from the flow of that commerce and have become so localized within the state as to compete with, and enjoy the benefits and advantages of, a local business, and which as localized commerce ought to pay their own way and not place other local business at a competitive disadvantage.

[fol. 296f] "We can only conclude that the taxpayer has sufficient factual connections with localized activities and transactions within the state to comply with the requirements of due process."

Both parties are agreed that to satisfy the due process clause there must be some minimal connection between petitioner's activities and the state. It is therefore proper for the Court to discuss local activities and we submit that the Court has adequately considered this issue and reached the right conclusion.

The petitioner states that with respect to *Minnesota Statutes*, Section 290.03, it has been construed to apply to interstate commerce only when it is so extensive that it has become localized. The Court, on page 14, stated:

> "As applied to nonresident taxpayers engaged in interstate commerce, it is confined to that portion of their income earned from business activities which are fairly apportioned to, and localized within, the state."

An analysis of the factors used in computing the tax will demonstrate that only local activities are taken into consideration in computing the tax. The tax is computed by dividing a taxpayer's net income by the ratio that taxpayer's Minnesota property, Minnesota payroll and Minnesota sales bears to the total property, payroll and sales. It necessarily follows that if a taxpayer has no Minnesota property, payroll or sales but merely ships goods through [fol. 296g] the state there will be no tax due to Minnesota. It also follows that to the extent that its Minnesota property, payroll and sales bear to total property, payroll and sales its net income will be apportioned to Minnesota.

The petitioner attempts to distinguish the cases relied upon by the Court. It fails, however, to present any new cases or any new argument not advanced in its earlier briefs. Our arguments on these cases have been set out in our earlier briefs and we feel nothing will be gained by restating them here. We submit that the Court has carefully considered in its decision all the case law on the questions at issue and the arguments of both parties. Since nothing new has been presented, there is no reason why the matter should be reconsidered or reargued.

The petitioner, on page 12, states:

> "This Court in its majority opinion makes the following assertion: 'Taxpayer contends, however, that since the rendition of the decision in Spector Motor Service v. O'Connor, 340 U.S. 602, 71 S. Ct. 508, 95 L. Ed. 573, no tax, even though it be fairly apportioned and non-discriminatory, may be levied on the net income of a foreign corporation engaged exclu-

sively in interstate commerce.' It is submitted that taxpayer has never made any such claim."

While we feel that the exact nature of the petitioner's assertions are irrelevant since the Court has thoroughly considered this aspect, we submit the petitioner is in error. [fol. 296h] In the first place, he has taken a part of the decision out of context. The Court immediately after the language cited above went on to say in the next sentence:

> "It is the position of the taxpayer that such a tax may be levied only in those cases where the foreign corporation is engaged in both intrastate and interstate commerce. We cannot agree with this interpretation of the Spector case."

We submit that the Court was correct in these statements.

The petitioner has on several occasions cited authority in an attempt to sustain the position that a corporation engaged exclusively in interstate commerce cannot be taxed under any circumstances.

The petitioner, in its (appellant's) brief at page 53, stated:

> "Since the Spector case, the Supreme Court has again and again reaffirmed that a corporation engaged exclusively in interstate commerce in a particular state cannot be taxed on that commerce by that state under any circumstances."

Again in the last paragraph of its argument, on page 60, the petitioner (appellant) in contending that interstate commerce cannot be taxed, stated:

> "As indicated heretofore, the Supreme Court in reversing the Court of Appeals in the Spector case, [fol. 296i] held that the Alpha case did foreclose all further discussion. Under that rule no state can impose an income tax on a foreign corporation whose only business in the state is exclusively interstate in

character. 'The constitutional infirmity of such a tax persists no matter how fairly it is apportioned to business done within the state.' (Spector Motor Service, supra, 71 S. Ct. at 512)."

In any event, the Court has thoroughly analyzed and considered the commerce clause question. This is clearly shown by its analysis of the *Spector* case where the Court stated:

"The Spector case did not turn on the fact that the foreign corporation was *solely* engaged in interstate commerce. The nub of the decision is that a net-income tax, even though it be fairly apportioned and nondiscriminatory, may not be imposed on the *privilege* of engaging in business that is exclusively interstate in character. * * * Since the incidence of the tax in the Spector case was the *privilege* itself of engaging in interstate commerce, it fell before the commerce clause. The court carefully distinguished those cases in which, as an exception to the general rule that no tax may be levied upon the *privilege* of engaging in interstate commerce, a state, where a taxpayer is engaged in both intrastate and interstate commerce, is permitted to tax the *privilege* of carrying on intrastate business and, within reasonable limits, is permitted to apply a fair proportion of the tax to the taxpayer's business which is done within the state. The court [fol. 296j] refused to extend the application of these hybrid cases to a taxpayer, like Spector, who is engaged exclusively in interstate commerce. * * * It follows that the Spector decision makes it reasonably clear that there is a constitutional channel for making interstate commerce pay its own way and that this channel gives the state a right to impose taxes upon other activities and aspects of the interstate commerce business which, unlike the *privilege* of doing interstate business, are subject to the sovereign power of the state despite the fact that such taxes may be derived out of income from interstate business."

We submit, therefore, that the Court correctly summarized the taxpayer's contentions, and so thoroughly analyzed the commerce clause question, that there is absolutely no basis for reconsideration.

On page 14 of its brief, the petitioner cites a portion of an editorial from the Minneapolis Star (June 28, 1957) to illustrate the consequences of this case and the need for commerce clause protection. Since this editorial has been interposed as an argument, we feel it should be set out in full.

> "At the recent national convention of state tax commissioners much of the conversation revolved about a June 14 decision of the Minnesota supreme court. The decision said that the Northwestern States Portland Cement Co. of Mason City, Iowa, must pay a Minnesota income tax of $112,000 on the business it did [fol. 296k] in this state between 1933 and 1948.
>
> "The Minnesota income tax law, which went into effect in 1933, applies to corporations outside the state which own property in Minnesota or do business here. Some such corporations have been paying the tax, many have not. The cement company, which refused to file returns in Minnesota, contended that it is engaged in interstate commerce and that its Minnesota business actually was transacted at Mason City, thus the Minnesota tax commissioner has no jurisdiction.
>
> "The state pointed out that the company has an office in Minneapolis, has five salesmen in Minnesota and delivers a considerable quantity of cement in this state. The state based its case largely on the allegation that the cement company systematically solicits business in Minnesota and maintains a continuous flow of merchandise into the state.
>
> "This may indicate that the state tax commissioner will not try to collect an income tax from outside corporations which do business with Minnesotans only occasionally. But if the state supreme court decision is upheld by the United States supreme court, then many other outside companies will be required to file Minnesota income tax returns.

> "California has an income tax law which similarly applies to outside businesses, and other income tax states probably will consider such provisions if the Minnesota law is upheld. Among tax officials the Minnesota litigation is looked upon as a 'landmark' case, [fol. 296-l] one which will greatly clarify the tax obligations of interstate commerce to the states where it operates.
>
> "For Minnesota, a favorable decision in the highest court will mean more revenue. In the view of some officials, it probably also will mean the establishment of more business branches in this state by outside companies which have shunned such branches to avoid paying the Minnesota income tax. If they must pay the tax anyway, they may change their policy on branch establishments.
>
> "On the other hand, the decision could have the effect of limiting Minnesota's attractiveness as a state in which non-Minnesota concerns wish to do business, unless other states adopt similar legislation."

The editorial is merely a review of the facts of the case and a discussion of possible consequences, some favorable to Minnesota and others unfavorable, in which the editor does not express an opinion or a conclusion. We, therefore, submit that it adds nothing. While consequences are usually not a factor in determining a legal question if they are a consideration in this case we feel that the Supreme Court was well aware of the implications of their decision respecting commerce. The Court, in its decision, set out the following language from the case of *McGoldrick* v. *Berwind-White Coal Mining Co.*, 309 U. S. 33, 46, 60 S. Ct. 388, 392, 84 L. Ed. 565, 570, 128 A. L. R. 876, 880:

> [fol. 296m] " * * * Not all state taxation is to be condemned because, in some manner, it has an effect upon commerce between the states, and there are many forms of tax whose burdens, when distributed through the play of economic forces, affect interstate commerce, which nevertheless falls short of the regulation of the commerce which the Constitution leaves to Congress

> A tax may be levied on net income wholly derived from interstate commerce. Nondiscriminatory taxation of the instrumentalities of interstate commerce is not prohibited. The like taxation of property shipped interstate, before its movement begins, or after it ends, is not a forbidden regulation."

The Court in discussing the impact on interstate commerce summarized it as follows:

> "Clearly, a net-income tax places no burden upon interstate commerce. The tax is levied after the interstate commerce transactions localized within the state have been completed, and after all expenses are paid and losses adjusted, and after the taxpayer, as the recipient of the remaining net income, is free to use it as he chooses. Thus the tax is exacted only after the stream of income-producing interstate commerce has ceased to flow."

It is clear, therefore, that the Court has thoroughly considered the burden of the tax at issue on interstate commerce.

[fol. 296n] It is respectfully submitted, therefore, that in view of the fact that no new arguments or authority have been submitted, that the petition for reargument or reconsideration should be denied.

Respectfully submitted,

Miles Lord, Attorney General, Perry Voldness, Assistant Attorney General, Arthur C. Roemer, Special Assistant Attorney General, 156 East Sixth Street, Saint Paul 1, Minnesota, Attorneys for Respondent.

[fol. 297]

IN SUPREME COURT OF STATE OF MINNESOTA
OFFICE OF CLERK OF SUPREME COURT
ST. PAUL, MINN.

[Title omitted]

ORDER DENYING PETITION FOR REARGUMENT—Aug. 28, 1957

Sir:

You will please take notice that on this date the following order was entered in the above entitled cause:

Ordered, that the petition for reargument herein be and the same hereby is denied and stay vacated.

Yours respectfully,

Mae Sherman, Clerk Supreme Court.

[fol. 298]

IN SUPREME COURT STATE OF MINNESOTA

STATE OF MINNESOTA, Respondent,

36826 v.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY, Appellant.

JUDGMENT—September 10, 1957

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of Two Hundred Thirty and 40/100

Dollars, ($230.40) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed September 10, 1957.

By the Court

Attest:

Mae Sherman, Clerk.

STATEMENT FOR JUDGMENT

Statutory Costs $25.00
Printer $205.40
Total $230.40

Satisfaction of Judgment filed

Therefore the above judgment is duly satisfied in full and discharged of record

Attest: Clerk.

By Deputy.

[fol. 299] [File endorsement omitted]

IN SUPREME COURT STATE OF MINNESOTA

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed September 12, 1957

I. Notice is hereby given that Northwestern States Portland Cement Company, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Minnesota entered in this action on September 10, 1957, affirming the judgment of the District Court, Fourth Judicial District, County of Hennepin, State of Minnesota.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(1) The full and complete record of the trial court proceedings in this action, including the complaint and answer and the transcript of all testimony and [fol. 300] evidence presented therein, together with the Trial Court's Findings of Fact, Conclusions of Law and Order for Judgment dated August 31, 1955; the memorandum of the Court attached thereto; the motion for Amended Findings of Fact, Conclusions of Law and Order for Judgment; Amended Findings of Fact, Conclusions of Law and Order for Judgment dated October 11, 1955; the Judgment of the District Court entered by the Clerk of District Court of Hennepin County, State of Minnesota, dated November 4, 1955; and the Notice of Appeal, to the Supreme Court of the State of Minnesota dated November 9, 1955.

(2) The majority and dissenting Opinions and final Judgment rendered by the Supreme Court of the State of Minnesota in this action.

(3) The Petition for Reargument filed with the Supreme Court of Minnesota on July 25, 1957, and the Order of the Supreme Court of Minnesota denying said Petition for Reargument, filed August 28, 1957.

(4) The following original exhibits introduced in and made a part of the evidence in this action:

Exhibit 1 Certificate from the Secretary of State of the State of Minnesota indicating that Northwestern States Portland Cement Company has not qualified to do business in the State of Minnesota.

Exhibit 2 Appellant's Certificate of Incorporation as Iowa corporation.

[fol. 301]

Exhibit	3	Certificate of Charter issued by the Secretary of State of the State of Iowa extending the corporate life of appellant.
Exhibit	4	Order form carried by salesman.
Exhibit	5	Order form used in Minneapolis office.
Exhibit	6	Report of shipments made to customers.
Exhibit	7	List of orders sent from Minneapolis office.
Exhibit	8	Acknowledgment of receipt of order.
Exhibit	11	Original invoice mailed to customer.
Exhibit	12	Acknowledgment of customer's order.
Exhibit	14	Form for quoting prices to customer.
Exhibit	15	Credit slip.
Exhibit	16	Quotation to Line Yard customers.
Exhibit	17	Quotation on specific work.
Exhibit	18	Contract of Purchase between appellant and a dealer.
Exhibit	19	Contract record for shipping purposes.
Exhibit	20	Contract of Purchase between appellant and purchasers.
Exhibit	26	Requisition form for advertising material.

III. The following questions are presented by this appeal.

A. Is Section 290.03 of the *Minnesota Statutes* (1953), under which the State of Minnesota seeks to impose a tax on the net income of the appellant, in conflict with and thus invalid and void under the Due Process Clause of the Fourteenth Amendment of the

[fol. 302] Constitution of the United States where the tax imposed is upon net income arising out of sales and activities consummated exclusively without and beyond the State of Minnesota, and where appellant is a foreign corporation that has never qualified to do business in Minnesota, and its only contact with the State of Minnesota has been the presence of its solicitors within the state.

B. Is Section 290.03 of the *Minnesota Statutes* (1953) in conflict with and thus invalid and void under the Commerce Clause, Article I; Section 8, Clause 3 of the Constitution of the United States insofar as it imposes a tax on the net income of the appellant, a foreign corporation, whose only activities in the State of Minnesota were an integral part of its interstate activities, and all revenue received by it from customers in Minnesota resulted from its operations in interstate commerce.

C. Did the Minnesota Court unconstitutionally assert jurisdiction over the appellant corporation, in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, where the appellant corporation was not, at the time of attempted service of process or any time prior thereto, engaged in doing business within the State of Minnesota, and where appellant's only contact with [fol. 303] the State of Minnesota was the presence of its solicitors within the state.

s/ Joseph A. Maun, 425 Hamm Building, Saint Paul 2, Minnesota, Attorney for Northwestern States Portland Cement Company, Appellant.

Of Counsel:

Bundlie, Kelley and Maun, 425 Hamm Building, Saint Paul 2, Minnesota, Smith & Beck, 505 First National Bank Building, Mason City, Iowa.

Proof of service (omitted in printing).

[fol. 304] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 305] [File endorsement omitted]

IN THE SUPREME COURT OF MINNESOTA

STATE OF MINNESOTA, Respondent,

36826 v.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY, Appellant.

MOTION—Filed December 9, 1957

Now comes the Appellant, Northwestern States Portland Cement Company, and based upon all the proceedings of record in the above entitled case, respectfully moves this Court for its Certificate setting forth that its decision in the above entitled case entered on September 10, 1957 was based upon the determination of a substantial and important federal question.

Dated this 6th day of December, 1957.

Joseph A. Maun, 425 Hamm Building, Saint Paul 2, Minnesota, Counsel for Appellant.

Of Counsel:

Bundlie, Kelley and Maun, 425 Hamm Building, Saint Paul 2, Minnesota.

[fol. 306] [File endorsement omitted]

IN THE SUPREME COURT OF MINNESOTA

STATE OF MINNESOTA, Respondent,

36826 v.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY, Appellant.

CERTIFICATE—Filed December 12, 1957

On motion of the Appellant, Northwestern States Portland Cement Company, this Court, in addition to its decision and orders made herein, orders it to be certified and made part of the record in this case and of the judgment heretofore rendered herein, that in its appeal from the District Court of Hennepin County, Minnesota, and in the argument both oral and by brief, made in this Court, the Appellant raised and relied upon the assertion that the statute, Minnesota Laws 1933, Chapter 405, Section 3; re-enacted and amended in Minnesota Laws 1937, Extra Session, C. 49, Sec. 3; re-enacted and amended in Minnesota Laws 1941, C. 550, Sec. 1; and re-enacted and amended in Minnesota Laws 1945, C. 410, Sec. 1; coded as Minnesota Statutes, §290.03, sought to be enforced by the Respondent, was repugnant to and void under the Commerce Clause, Article I, Section 8, Clause 3, of the Constitution of the [fol. 307] United States, and the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States. It is further certified that the issues as thus presented in this case, made it incumbent upon this Court, as part of its decision, to render its determination with respect to a substantial and important federal question, namely, whether Respondent's enforcement of Minnesota Statutes §290.03, [Minnesota Laws 1933, Chapter 405, Section 3; re-enacted and amended in Minnesota Laws 1937, Extra Session, C. 49, Sec. 3; re-enacted and amended

in Minnesota Laws 1941, C. 550, Sec. 1; and re-enacted and amended in Minnesota Laws 1945, C. 410, Sec. 1,] was in violation of the Commerce Clause, Article I, Section 8, Clause 3, of the Constitution of the United States, and the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, and the decision of the Court in this case is based in substantial part upon that determination. This certificate is not to be construed as a modification of the aforesaid decision.

Dated this 12 day of December, 1957.

SUPREME COURT OF MINNESOTA

Roger Dell, Chief Justice.

[fol. 308] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 309]

SUPREME COURT OF THE UNITED STATES

No. 606—October Term, 1957.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY, Appellant,

v.

STATE OF MINNESOTA.

ORDER NOTING PROBABLE JURISDICTION—January 6, 1958

The statment (sic) of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Note

Pages 305, 316, 317, 318, 319, 322, 323, 324, 325, 326 are on Card 6.

[fol. 311]

DEFENDANT'S EXHIBIT 2

(J)

3261

IOWA

SECRETARY OF STATE

RENEWAL, AMENDED & SUBSTITUTED ARTICLES

CORPORATE CHARTER

December 22nd, 19 50.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY
Mason City, Iowa

has filed articles of incorporation in this office and is hereby authorized to transact business as a corporation from November 8th, *19* 50 *Perpetually.*

Fees Paid:

Filing . . $ 22.00

Recording $ 2.25

SECRETARY OF STATE

311

[fol. 312]

DEFENDANT'S EXHIBIT 3

STATE OF IOWA

STATE DEPARTMENT.

I Hereby Certify that the

Number 41526

*** NORTHWESTERN STATES PORTLAND CEMENT COMPANY ***

of *** MASON CITY *** Iowa a corporation organized under the laws of the STATE OF IOWA has filed in this office Articles of Incorporation and paid the fees as provided by law.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the seal of my office. Done at Des Moines the capital this 8 day of NOVEMBER A.D. 30

Ed M. Smith
Secretary of State.

By Earl C. Ryan
Deputy

Expires NOVEMBER 8 A.D. 50

(312)

[fol. 312a]

DEFENDANT'S EXHIBIT 4

100—FORM S6—4-52—S.P.CO.

Northwestern States Portland Cement Co.
MASON CITY, IOWA

_____ 195_____
(Date)

Invoice to _____

Address _____

Ship to _____
(Name)

Destination _____

Date of Shipment _____

Route _____

BBLS.	COMMODITY	TYPE PACKAGE	PRICE F. O. B. DEST.
	Standard Portland Cement		
	Plastolith Portland Cement		
	High Early Strength Cement		
	Masons Cement	Paper	

Terms and conditions printed on reverse side of this order are made a part hereof as fully as if written here.

All orders subject to acceptance in writing by Northwestern States Portland Cement Company, General Office, Mason City, Iowa.

Signed: _____

_____

Salesman _____

[Fol. 313] (309)

TERMS AND CONDITIONS

TERMS OF PAYMENT:— On approved credit net cash 30 days from date of invoice, or 10c per barrel discount for cash in 15 days from date of invoice, on Portland, Plastolith, High Early Strength or Masons Cement.

CREDIT — If at any time the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, it reserves the right to require payments in advance or satisfactory security or guarantee that invoices will be promptly paid when due.

If Buyer fails to comply with terms of payment, or with any of the other terms of sale, Seller reserves the right to cancel any unfilled orders, without notice. Buyer remaining liable for all unpaid accounts. No waiver of such right shall be implied from any failure by Seller to exercise the same.

313

PACKAGE — Price on cement packed in paper bags includes the paper bags which are not returnable.

Shipments of bulk cement shall be invoiced and collected for on a basis of track scale weights nearest to point of origin.

CLAIMS — Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on original destination freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

Seller reserves the right to select the route and method by which shipments shall be forwarded.

SPECIFICATIONS — The cement shipped under this quotation shall conform to the present standard specifications for Portland Cement of the American Society for Testing Materials. No other Warranty is made in respect thereof. Seller having no control over the use of cement, will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal or other material, governmental interference or regulation, delays in transportation, or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

WEIGHT—Price shown for Standard Portland—Plastolith (air-entraining)—High Early Strength Cements is per standard barrel of 376 pounds net. For Masons Cement is per barrel of 280 pounds net.

FREIGHT—Freight charges prepaid by the Seller.

[fol. 317]

DEFENDANT'S EXHIBIT 5

5M—FORM 86—4-54—S.P.CO.

Northwestern States Portland Cement Co.
MASON CITY, IOWA

_____ 195___
(Date)

Invoice to _____

Address _____

Ship to _____
(Name)

Destination _____

Date of Shipment _____

Route _____

BBLS.	COMMODITY	TYPE PACKAGE	PRICE F. O. B. DEST.
	Standard Portland Cement		
	Plastolith Portland Cement		
	High Early Strength Cement		
	Masons Cement	Paper	

Terms and conditions printed on reverse side of this order are made a part hereof as fully as if written here.

All orders subject to acceptance in writing by Northwestern States Portland Cement Company, General Office, Mason City, Iowa.

Signed: _____

_____

Salesman _____

317

[fol. 318] (p. 311)

TERMS AND CONDITIONS

TERMS OF PAYMENT:— On approved credit net cash 30 days from date of invoice, or 10c per barrel discount for cash in 15 days from date of invoice, on Portland, Plastolith, High Early Strength or Masons Cement.

CREDIT — If at any time the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, it reserves the right to require payments in advance or satisfactory security or guarantee that invoices will be promptly paid when due.

If Buyer fails to comply with terms of payment, or with any of the other terms of sale, Seller reserves the right to cancel any unfilled orders, without notice. Buyer remaining liable for all unpaid accounts. No waiver of such right shall be implied from any failure by Seller to exercise the same.

PACKAGE — Price on cement packed in paper bags includes the paper bags which are not returnable.

Shipments of bulk cement shall be invoiced and collected for on a basis of track scale weights nearest to point of origin.

CLAIMS — Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on original destination freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

Seller reserves the right to select the route and method by which shipments shall be forwarded.

SPECIFICATIONS — The cement shipped under this quotation shall conform to the present standard specifications for Portland Cement of the American Society for Testing Materials. No other Warranty is made in respect thereof. Seller having no control over the use of cement, will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal or other material, governmental interference or regulation, delays in transportation, or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

WEIGHT—Price shown for Standard Portland—Plastolith (air-entraining)—High Early Strength Cements is per standard barrel of 376 pounds net. For Masons Cement is per barrel of 280 pounds net.

FREIGHT—Freight charges prepaid by the Seller.

312

[fol. 319]

DEFENDANT'S EXHIBIT 6

520-2M-4-53-S.P.Co.

DAILY LOADING RECORD

NORTHWESTERN STATES PORTLAND CEMENT COMPANY

SALES DEPARTMENT

Mason City, Iowa_____

To MINNEAPOLIS OFFICE,
Minneapolis, Minnesota

Below you will find listed, cars loaded and billed today to points in Minnesota and North Dakota.

CUSTOMER	DESTINATION	BBLS.	INITIAL	CAR NO.	ROUTING

[fol. 320]

DEFENDANT'S EXHIBIT 7

Form S-54-286-8-47-S.P.Co.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY

Minneapolis, Minnesota

To SALES DEPARTMENT
Mason City, Iowa

We are forwarding you today, orders as shown below:

ORDER NO.	BBLS.	CUSTOMER	DESTINATION	TIME OF SHIPMENT

[fol. 321]

DEFENDANT'S EXHIBIT 8

S31-5M-5-33-S.P.Co.

ACKNOWLEDGMENT OF ORDER

NORTHWESTERN STATES PORTLAND CEMENT CO

MASON CITY, IOWA

Order No.

Your order
has been received and in accordance therewith we will ship

To

Destination

Via , the following items:

Bbls.	NORTHWESTERN PORTLAND CEMENT per standard barrel of 376 pounds net.	in paper	$
Bbls.	NORTHWESTERN PLASTOLITH AIR-ENTRAINING PORTLAND CEMENT Per standard barrel of 376 pounds net.	in paper	$
Bbls.	NORTHWESTERN HIGH EARLY STRENGTH PORTLAND CEMENT per standard barrel of 376 pounds net.	in paper	$
Bbls.	NORTHWESTERN MASONS CEMENT per barrel of 280 pounds net.	in paper	$

These prices are f. o. b. cars destination shown above.
This order is subject to the terms and conditions printed on the back hereof.

We appreciate this order and trust we may receive your further favors.

Yours very truly,

NORTHWESTERN STATES PORTLAND CEMENT CO.

(321)

[fol. 322]

TERMS AND CONDITIONS

TERMS OF PAYMENT:— On approved credit net cash 30 days from date of invoice, or 10c per barrel discount for cash in 15 days from date of invoice, on Portland, Plastolith, High Early Strength or Masons Cement.

CREDIT — If at any time the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, it reserves the right to require ayments in advance or satisfactory security or guarantee that invoices will be promptly paid when due.

If Buyer fails to comply with terms of payment, or with any of the other terms of sale, Seller reserves the right to cancel any unfilled orders, without notice. Buyer remaining liable for all unpaid accounts. No waiver of such right shall be implied from any failure by Seller to exercise the same.

PACKAGE — Price on cement packed in paper bags includes the paper bags which are not returnable.

Shipments of bulk cement shall be invoiced and collected for on a basis of track scale weights nearest to point of origin.

CLAIMS — Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on original destination freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

Seller reserves the right to select the route and method by which shipments shall be forwarded.

SPECIFICATIONS — The cement shipped under this quotation shall conform to the present standard specifications for Portland Cement of the American Society for Testing Materials. No other Warranty is made in respect thereof. Seller having no control over the use of cement, will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal or other material, governmental interference or regulation, delays in transportation, or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

WEIGHT—Price shown for Standard Portland—Plastolith (air-entraining)—High Early Strength Cements is per standard barrel of 376 pounds net. For Masons Cement is per barrel of 280 pounds net.

FREIGHT—Freight charges prepaid by the Seller.

(322)

[fol. 328]

DEFENDANT'S EXHIBIT 12

E-Z-OUT
REG. U.S. PAT. OFF.

Form S-23 10M 3-54

NORTHWESTERN STATES PORTLAND CEMENT CO.
MASON CITY, IOWA

TER
LOAD ORDER
NO. 08218

DATE

TO

TO BE
SHIPPED

YOUR ORDER

ACKNOWLEDGMENT

YOUR ORDER HAS BEEN RECEIVED AND IN ACCORDANCE
WE WILL SHIP

SPECIAL INSTRUCTIONS

TO

DESTINATION

ROUTE

*PLUS 15% INCREASE IN FREIGHT CHARGES
AND 3% GOV'T TAX ON ALL CHARGES.

BARRELS	COMMODITY		NET WEIGHT PER BARREL	RATE CWTS	PRICE F.O.B. DESTINATION
	Northwestern Portland Cement	In Paper	376 Pounds		$ Per Bbl.
	Northwestern Plastolith Air Entraining Portland Cement	In Paper	376 Pounds		$ Per Bbl.
	Northwestern High Early Strength Cement	In Paper	376 Pounds		$ Per Bbl.
	Northwestern Masons Cement	In Paper	280 Pounds		$ Per Bbl.
	White Cement	In Paper	376 Pounds		$ Per Bbl.

Prepaid

This order is subject to terms and conditions on back thereon.
We appreciate this order and trust we may receive your further favors.

Yours very truly,
NORTHWESTERN STATES PORTLAND CEMENT CO.

328

BARGO INC. - CHICAGO

[fol. 329]

-OUT
PAT. OFF.

NORTHWESTERN STATES PORTLAND CEMENT CO.
MASON CITY, IOWA

TER
LOAD ORDER
NO. 08218

INVOICE TO

ADDRESS

TO

DESTINATION

DESTINATION

DATE
TO BE
SHIPPED
CUSTOMER'S NO.

SPECIAL INSTRUCTIONS

*PLUS 15% INCREASE IN FREIGHT CHARGE
AND 3% GOV'T TAX ON ALL CHARGES.

ROUTE

SAMPLED BY

CREDIT O.K.

BARRELS	SACKS	COMMODITY	Weight	RATE CWT.	PRICE F.O.B. DESTINATION
		Standard Portland Cement In Paper			$ Per Bbl.
		Plastolith Portland Cement In Paper			$ Per Bbl.
		High Early Strength Cement In Paper			$ Per Bbl.
		Masons. Cement In Paper			$ Per Bbl.
		White Cement In Paper			$ Per Bbl.
				Prepaid	

SHIPPED _____ IN CAR _____

329

[fol. 344]

TERMS AND CONDITIONS

CREDIT — If at any time the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, it reserves the right to require payments in advance or satisfactory security or guarantee that invoices will be promptly paid when due.

If Buyer fails to comply with terms of payment, or with any of the other terms of sale, Seller reserves the right to cancel any unfilled orders, without notice. Buyer remaining liable for all unpaid accounts. No waiver of such right shall be implied from any failure by Seller to exercise the same.

PACKAGE — Price on cement packed in paper bags includes the paper bags which are not returnable.

Shipments of bulk cement shall be invoiced and collected for on a basis of track scale weights nearest to point of origin.

CLAIMS — Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on original destination freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

Seller reserves the right to select the route and method by which shipments shall be forwarded.

SPECIFICATIONS — The cement shipped under this quotation shall conform to the present standard specifications for Portland Cement of the American Society for Testing Materials. No other Warranty is made in respect thereof. Seller having no control over the use of cement, will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal or other material, governmental interference or regulation, delays in transportation, or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

WEIGHT—Price shown for Standard Portland—Plastolith (air-entraining)—High Early Strength Cements is per standard barrel of 376 pounds net. For Masons Cement is per barrel of 280 pounds net.

FREIGHT—Freight charges prepaid by the Seller.

All orders subject to acceptance in writing by

NORTHWESTERN STATES PORTLAND CEMENT COMPANY

General Office — Mason City, Iowa

344

[fol. 310]

DEFENDANT'S EXHIBIT 1

United States of America.

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, Mrs. Mike Holm, Secretary of State of the State of Minnesota, keeper of the Great Seal of said state and custodian of the documents pertaining to the formation of corporations under, and the compliance of foreign corporations with, the laws of this state, do hereby certify:

That I have made due and diligent search of the files and records in this office, and such search fails to reveal any record of a domestic corporation by the name of "Northwestern States Portland Cement Co.", as ever having been made, or that a foreign corporation of that name has ever made compliance with the laws of this state relating to foreign corporations.

WITNESS my official signature hereunto subscribed and the Great Seal of the State of Minnesota hereunto affixed this fifth day of November, A. D. 1954.

Mrs. Mike Holm

Secretary of State

[fol. 322a]

DEFENDANT'S EXHIBIT 11

05088

E-Z OUT
REG U S PAT OFF

FORM A-19 10M 1-58

ORIGINAL INVOICE

(NAME OF CARRIER)

Northwestern States Portland Cement Co.
MASON CITY, IOWA

SOLD TO

Cust. Order No.
Price F.O.B. Destination
Contract No.

Consigned to

Destination
Route
Del. Carrier

Shipping Date
Invoice No.
L. O. No.
Car Initials. No.

NO. PACKAGES	ITEM	WEIGHT	RATE	BARRELS	PRICE	AMOUNT
	Paper Sacks Northwestern Portland Cement					
	Northwestern Portland Cement in Bulk					
	Paper Sacks Northwestern Portland Plastolith Cement					
	Northwestern Portland Plastolith Cement in Bulk					
	Paper Sacks Northwestern High Early Cement					
	Northwestern High Early Cement in Bulk					
	Paper Sacks Northwestern Masons Cement					

Terms: 30 days net: Discount amounting to If paid within 15 days from date of invoice.

The seller represents that the prices charged in this invoice do not exceed the applicable maximum prices, if any, permitted by Government Price regulations.

We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.

ALL ARRANGEMENTS MADE CONTINGENT UPON STRIKES OR CAUSES BEYOND OUR CONTROL

3252

BASCO INC. - CHICAGO

317

[fol. 325]

05088

E-Z-OUT
REG. U. S. PAT. OFF.

FORM A-19 10M 1-52

Carrier's No.

(NAME OF CARRIER)

STRAIGHT BILL OF LADING - SHORT FORM

ORIGINAL — NOT NEGOTIABLE

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading, at Mason City, Iowa

FROM **Northwestern States Portland Cement Co.**

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination. If on its route, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Official, Southern, Western, Illinois and Uniform Freight Classifications in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

†This shipment is correctly described and weight shown is shipper's, subject to verification by Western Weighing & Inspection Bureau, according to Agreement No. 1708.
†(Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission.)

†This is the property of the shipper, and no reconsignment or diversion is to be made unless authorized by the consignor.

Consigned to

Destination

Route

Del. Carrier

Shipping Date

Invoice No.

L. O. No.

Car Initials No.

NO. PACKAGES	Kind of Package, Description of Articles, Special Marks, and Exceptions	# WEIGHT	# RATE	
	Paper Sacks Northwestern Portland Cement Northwestern Portland Cement in Bulk Paper Sacks Northwestern Portland Plastolith Cement Northwestern Portland Plastolith Cement in Bulk Paper Sacks Northwestern High Early Cement Northwestern High Early Cement in Bulk Paper Sacks Northwestern Masons Cement			

(# † Plus 15% increase in freight charges. Plus 3% Gov't tax on all charges.)

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight. NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated

by the shipper to be not exceeding per

Northwestern States Portland Cement Co., Shipper

Per

Permanent post-office address of shipper: MASON CITY, IOWA

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Northwestern States Portland Cement Co.

Per

(Signature of consignor.)

Per

Agent

If charges are to be prepaid, write or stamp here, "To be Prepaid."

TO BE PREPAID

Received $

to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced: $

325

HARCO INC. - CHICAGO

318

[fol. 326]

05088

FORM A-19 10M 1-53

(NAME OF CARRIER)

Carrier's No.

THIS SHIPPING ORDER MUST BE LEGIBLY FILLED IN, IN INK, IN INDELIBLE PENCIL, OR IN CARBON, AND RETAINED BY THE AGENT.

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this shipping order, at Mason City, Iowa

FROM Northwestern States Portland Cement Co.

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Official, Southern, Western, Illinois and Uniform Freight Classifications in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

†This shipment is correctly described and weight shown is shipper's, subject to verification by Western Weighing & Inspection Bureau, according to Agreement No. 1708.
†(Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission.)

†This is the property of the shipper, and no reconsignment or diversion is to be made unless authorized by the consignor.

Consigned to

Destination

Route

Del. Carrier

Shipping Date

Invoice No.

L. O. No.

Car Initials No.

NO. PACKAGES	Kind of Package, Description of Articles, Special Marks, and Exceptions	* WEIGHT	# RATE	
	Paper Sacks Northwestern Portland Cement Northwestern Portland Cement in Bulk Paper Sacks Northwestern Portland Plastolith Cement Northwestern Portland Plastolith Cement in Bulk Paper Sacks Northwestern High Early Cement Northwestern High Early Cement in Bulk Paper Sacks Northwestern Masons Cement			

(# † Plus 15% increase in freight charges. Plus 3% Gov't tax on all charges.)

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight. NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated

by the shipper to be not exceeding per

Northwestern States Portland Cement Co., Shipper

Per

Permanent post-office address of shipper: MASON CITY, IOWA

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Northwestern States Portland Cement Co.

Per

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

TO BE PREPAID

Received $

to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced: $

☞ AGENT MUST DETACH AND RETAIN THIS SHIPPING ORDER AND MUST SIGN THE ORIGINAL BILL OF LADING

BARCO INC. - CHICAGO

326

[fol. 327]

319

05088

E-Z-OUT
REG. U. S. PAT. OFF.

FORM A-19 10M 1-53

Carrier's No.

(NAME OF CARRIER)

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading, at Mason City, Iowa

FROM Northwestern States Portland Cement Co.

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination. If on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Official, Southern, Western, Illinois and Uniform Freight Classifications in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

†This shipment is correctly described and weight shown is shipper's, subject to verification by Western Weighing & Inspection Bureau, according to Agreement No. 1708.
†(Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission.)

†This is the property of the shipper, and no reconsignment or diversion is to be made unless authorized by the consignor.

Consigned to

Destination

Route

Del. Carrier

Shipping Date

Invoice No.

L. O. No.

Car Initials No.

NO. PACKAGES	Kind of Package, Description of Articles, Special Marks, and Exceptions	* WEIGHT	# RATE	
	Paper Sacks Northwestern Portland Cement Northwestern Portland Cement in Bulk Paper Sacks Northwestern Portland Plastolith Cement Northwestern Portland Plastolith Cement in Bulk Paper Sacks Northwestern High Early Cement Northwestern High Early Cement in Bulk Paper Sacks Northwestern Masons Cement			

(# † Plus 15% increase in freight charges. Plus 3% Gov't tax on all charges.)

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight. NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding per

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Northwestern States Portland Cement Co.
Per
(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

TO BE PREPAID

Received $
to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.
Per
(The signature here acknowledges only the amount prepaid.)
Charges advanced: $

Northwestern States Portland Cement Co., Shipper
Per
Permanent post-office address of shipper: MASON CITY, IOWA

Agent
Per

DARCO INC. - CHICAGO

327

322

[fol. 337]

DEFENDANT'S EXHIBIT 13

36828

1

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, March 15, 1922, as amended August 1, 1930, and June 15, 1941.)

UNIFORM STRAIGHT BILL OF LADING

ORIGINAL—NOT NEGOTIABLE

Shipper's No._____

_____COMPANY Agent's No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

At Mason City, Iowa,_____19____, From Northwestern States Portland Cement Company

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only)

Consigned to_____

Destination_____ State of_____ County of_____

Route_____

Delivering Carrier_____ Car Initial_____ Car No._____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
	Sacks N. S. Portland Cement in Cloth			
	Sacks N. S. Portland Cement in Paper			
	N. S. Portland Cement in Bulk			
	Sacks N. S. High Early Strength Cement			
	Sacks N. S. Masons Cement			

This shipment is correctly described.
Correct weight is_____ lbs.
Subject to verification by the
WESTERN WEIGHING and INSP. BUREAU
According to Agreement No. 1708
Northwestern States Portland Cement Co.
Shipper

Shipper's imprint in lieu of stamp not a part of bill of lading approved by the Interstate Commerce Commission.

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

_____ per_____

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

_____
(Signature of Consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

TO BE PREPAID

Received $_____
to apply in prepayment of the charges on the property described hereon.

_____
Agent or Cashier

Per_____
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

NORTHWESTERN STATES PORTLAND CEMENT COMPANY
Shipper

Per_____
Permanent Postoffice Address of Shipper: MASON CITY, IOWA.

_____ Agent

Per_____

KLIPTE LOOSE LEAF CO., MASON CITY, IA.

337

[fol. 338]

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: Provided, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: Provided, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharfs, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges: Provided, That, where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. On shipments reconsigned or diverted by an agent who has furnished the carrier in the reconsignment or diversion order with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. If the reconsignor or diverter has given to the carrier erroneous information as to who the beneficial owner is, such reconsignor or diverter shall himself be liable for all such charges.

If a shipper or consignor of a shipment of property (other than a prepaid shipment) is also the consignee named in the bill of lading and, prior to the time of delivery, notifies, in writing, a delivering carrier by railroad (a) to deliver such property at destination to another party, (b) that such party is the beneficial owner of such property, and (c) that delivery is to be made to such party only upon payment of all transportation charges in respect of the transportation of such property, and delivery is made by the carrier to such party without such payment, such shipper or consignor shall not be liable (as shipper, consignor, consignee, or otherwise) for such transportation charges but the party to whom delivery is so made shall in any event be liable for transportation charges billed against the property at the time of such delivery, and also for any additional charges which may be found to be due after delivery of the property, except that if such party prior to such delivery has notified in writing the delivering carrier that he is not the beneficial owner of the property, and has given in writing to such delivering carrier the name and address of such beneficial owner, such party shall not be liable for any additional charges which may be found to be due after delivery of the property; but if the party to whom delivery is made has given to the carrier erroneous information as to the beneficial owner, such party shall nevertheless be liable for such additional charges. If the shipper or consignor has given to the delivering carrier erroneous information as to who the beneficial owner is, such shipper or consignor shall himself be liable for such transportation charges, notwithstanding the foregoing provisions of this paragraph and irrespective of any provisions to the contrary in the bill of lading or in the contract of transportation under which the shipment was made. The term "delivering carrier" means the line-haul carrier making ultimate delivery.

Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Where delivery is made by a common carrier by water the foregoing provisions of this section shall apply, except as may be inconsistent with Part III of the Interstate Commerce Act.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, and loss, damage or injury to said property occurs while the same is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water (this bill of lading being such bill of lading if the property is transported by such water carrier thereunder) and by and under the laws and regulations applicable to transportation by water. Such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, as well as the following subdivisions of this section; and to the conditions contained in this bill of lading not inconsistent with this section, when this bill of lading becomes the bill of lading of the carrier by water.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, Sections 1 to 15, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

338

[fol. 339]

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, March 15, 1922, as amended August 1, 1930, and June 15, 1941.)

THIS SHIPPING ORDER must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon, and retained by the Agent.

Shipper's No._____

_____ COMPANY

Agent's No._____

RECEIVE, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order,

At Mason City, Iowa, _____ 19____ **From Northwestern States Portland Cement Company**

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only)

Consigned to _____

Destination _____ **State of** _____ **County of** _____

Route _____

Delivering Carrier _____ **Car Initial** _____ **Car No.** _____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
	Sacks N. S. Portland Cement in Cloth			
	Sacks N. S. Portland Cement in Paper			
	N. S. Portland Cement in Bulk			
	Sacks N. S. High Early Strength Cement			
	Sacks N. S. Masons Cement			

This shipment is correctly described.
Correct weight is _____ *lbs.*
Subject to verification by the
WESTERN WEIGHING and INSP. BUREAU
According to Agreement No. 1708
Northwestern States Portland Cement Co.
Shipper

Shipper's imprint in lieu of stamp not a part of bill of lading approved by the Interstate Commerce Commission.

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

_____
(Signature of Consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

TO BE PREPAID

Received $_____
to apply in prepayment of the charges on the property described hereon.

_____
Agent or Cashier

Per _____
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per _____

NORTHWESTERN STATES PORTLAND CEMENT COMPANY
Shipper

Per _____
Permanent Postoffice Address of Shipper: MASON CITY, IOWA.

ELIPTC LOOSE LEAF CO., MASON CITY, IA.

☞ Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

339

[fol. 341]

3

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, March 15, 1922, as amended August 1, 1930, and June 15, 1941.)

THIS MEMORANDUM is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate covering the property named herein, and is intended solely for filing or record

Shipper's No._____

_____ COMPANY

Agent's No._____

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

At Mason City, Iowa,_____ 19____, From Northwestern States Portland Cement Company

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only)

Consigned to_____

Destination_____ State of_____ County of_____

Route_____

Delivering Carrier_____ Car Initial_____ Car No._____

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
	Sacks N. S. Portland Cement in Cloth			
	Sacks N. S. Portland Cement in Paper			
	N. S. Portland Cement in Bulk			
	Sacks N. S. High Early Strength Cement			
	Sacks N. S. Masons Cement			

This shipment is correctly described.
Correct weight is_____ lbs.
Subject to verification by the
WESTERN WEIGHING and INSP. BUREAU
According to Agreement No. 1708
Northwestern States Portland Cement Co.
Shipper

Shipper's imprint in lieu of stamp not a part of bill of lading approved by the Interstate Commerce Commission.

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

_____
(Signature of Consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

TO BE PREPAID

Received $_____
to apply in prepayment of the charges on the property described hereon.

_____
Agent or Cashier

Per_____
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_____

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per_____

NORTHWESTERN STATES PORTLAND CEMENT COMPANY
Shipper

Per_____
Permanent Postoffice Address of Shipper: MASON CITY, IOWA.

_____ Agent

Per_____

ELIPTC LOOSE LEAF CO., MASON CITY, IA.

[fol. 343]

DEFENDANT'S EXHIBIT 14

Form S-7 5M-4-54-S.P.Co.

NORTHWESTERN STATES PORTLAND CEMENT CO.

"NORTHWESTERN BRANDS"

THE RELIABLE CEMENTS

MASON CITY, IOWA

Effective_____we quote you NORTHWESTERN PRODUCTS in carload or mixed carload lots as follows and guarantee these prices against increase during the calendar quarter ending_____.

Any reduction in our prices f. o. b. cars your Station during the calendar quarter becomes effective immediately.

Prices include freight at present rates and will be increased by the amount of any increase in freight rate and/or any Government tax on freight and/or by the amount of any tax on sales or contracts of sale effective on any shipments resulting from this quotation:

	STANDARD OR PLASTOLITH (Air entraining) PORTLAND CEMENTS		MASONS CEMENT
	Bulk	Paper Bags	Paper Bags
F. O. B. Cars our Plant, Mason City, Iowa, Transportation Charges COLLECT.	_____per bbl.	_____per bbl.	_____per bbl.
F. O. B. Cars Your Station Transportion Charges PREPAID	_____per bbl.	_____per bbl.	_____per bbl.

HIGH EARLY STRENGTH CEMENT 50¢ per bbl. more than PORTLAND.

TERMS: On approved credit, net cash 30 days from date of invoice, or 10¢ per barrel discount for cash in 15 days from date of invoice. This quotation is subject to the terms and conditions on both sides hereof, and is not binding until orders have been accepted in writing by this Company

Yours very truly,

NORTHWESTERN STATES PORTLAND CEMENT CO.

328

[fol. 345]

DEFENDANT'S EXHIBIT 15

S-56-10-49-S.P.Co.

Northwestern States Portland Cement Company

Mason City, Iowa

ACCOUNTING DEPARTMENT:

The following claim has been presented by

_____, _____, _____

covering shipment of Car No._____Date_____No. Bbls._____

Order No._____ Invoice No._____ shipped to_____

_____, _____as follows:

The above claim is hereby approved and recommend that the allowance be made

Credit No._____

Date_____

_____

Sales Manager

345

[fol. 347]

DEFENDANT'S EXHIBIT 16

Form S-10 3M-3-54-S.P.Co.

NORTHWESTERN STATES PORTLAND CEMENT CO.

"NORTHWESTERN BRANDS"

THE RELIABLE CEMENTS

MASON CITY, IOWA

Effective _____ we quote you on NORTHWESTERN PRODUCTS in carload or mixed carload lots as follows and guarantee these prices against increase during the calendar quarter ending _____

Any reduction in our prices f. o. b. cars your Station during the calendar quarter becomes effective immediately.

Prices include freight at present rates and will be increased by the amount of any increase in freight rate and/or any Government tax on freight and/or by the amount of any tax on sales or contracts of sale effective on any shipments resulting from this quotation.

F. O. B. Cars, Our Plant, Mason City, Iowa
Transportation Charges, COLLECT

NORTHWESTERN STANDARD OR PLASTOLITH (air-entraining) PORTLAND CEMENTS ..... Bulk _____ per bbl. Paper _____ per bbl.

NORTHWESTERN MASONS CEMENT ..... Paper _____ per bbl.

F. O. B. Cars—Stations Listed Below— Transportation Charges PREPAID	Standard or Plastolith (air-entraining) Portland Cmts. in paper	Masons Cement in paper	F. O. B. Cars—Stations Listed Below— Transportation Charges PREPAID	Standard or Plastolith (air-entraining) Portland Cmts. in paper	Masons Cement in paper

TERMS: On approved credit, net cash 30 days from date of invoice, or 10¢ per barrel discount for cash in fifteen days from date of invoice. This quotation is subject to the terms and conditions on both sides hereof, and is not binding until orders have been accepted in writing by this Company.

Yours very truly,

NORTHWESTERN STATES PORTLAND CEMENT CO.

HIGH EARLY STRENGTH CEMENT 50¢ per bbl. more than above Portland prices.

347

330

[fol. 348]

TERMS AND CONDITIONS

SHIPMENT — Orders entered for fifteen day shipment shall be subject to shipment on the fifteenth day, without notice, unless sooner ordered out by the Purchaser.

CREDIT — If at any time the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, it reserves the right to require payments in advance or satisfactory security or guarantee that invoices will be promptly paid when due.

If Buyer fails to comply with terms of payment, or with any of the other terms of sale, Seller reserves the right to cancel any unfilled orders, without notice. Buyer remaining liable for all unpaid accounts. No waiver of such right shall be implied from any failure by Seller to exercise the same.

PACKAGE — Price on cement packed in paper bags includes the paper bags which are not returnable.

Shipments of bulk cement shall be invoiced and collected for on a basis of track scale weights nearest to point of origin.

CLAIMS — Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on original destination freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

Seller reserves the right to select the route and method by which shipments shall be forwarded.

SPECIFICATIONS — The cement shipped under this quotation shall conform to the present standard specifications for Portland Cement of the American Society for Testing Materials. No other Warranty is made in respect thereof. Seller having no control over the use of cement, will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal or other material, governmental interference or regulation, delays in transportation, or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

WEIGHT—Price shown for Standard Portland—Plastolith (air-entraining)—High Early Strength Cements is per standard barrel of 376 pounds net. For Masons Cement is per barrel of 280 pounds net.

FREIGHT—Freight charges prepaid by the Seller.

All orders subject to acceptance in writing by

NORTHWESTERN STATES PORTLAND CEMENT COMPANY
General Office — Mason City, Iowa

348

[fol. 349]

DEFENDANT'S EXHIBIT 17

Form S-9 3M-7-54-S.P.Co.

NORTHWESTERN STATES PORTLAND CEMENT CO.

"NORTHWESTERN BRANDS"

THE RELIABLE CEMENTS

MASON CITY, IOWA

SPECIFIC WORK QUOTATION

We quote you on Northwestern States Cements for the work herein described, subject to conditions on both sides hereof, in carload lots f. o. b. cars

PORTLAND CEMENT	Per barrel in paper including sacks.
PORTLAND CEMENT	Per barrel in bulk.
PLASTOLITH (air-entraining) CEMENT—Same price as Standard Portland Cement.	
HIGH EARLY STRENGTH CEMENT	Per barrel in paper including sacks.
HIGH EARLY STRENGTH CEMENT	Per barrel in bulk.
MASONS CEMENT	Per barrel in paper including sacks.

TERMS: On approved credit net cash 30 days from date of invoice, or 10 cents per barrel discount for cash in 15 days from date of invoice.

WORK:

PRICE GUARANTEE: The above price is guaranteed for the calendar quarter ending After that date our price on Northwestern cements will be our current market price in effect at the time of shipment but not more than 15¢ per barrel above our price in effect on the date this quotation is written.

QUANTITY:

SHIPMENTS: As the work requires. Deliveries to be completed prior to

ACCEPTANCE: This quotation is for your acceptance within

Yours very truly,

NORTHWESTERN STATES PORTLAND CEMENT CO.

E A Hanson

Sales Manager.

349

TERMS AND CONDITIONS

CREDIT — If at any time the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, it reserves the right to require payments in advance or satisfactory security or guarantee that invoices will be promptly paid when due.

If Buyer fails to comply with terms of payment, or with any of the other terms of sale, Seller reserves the right to cancel any unfilled orders, without notice. Buyer remaining liable for all unpaid accounts. No waiver of such right shall be implied from any failure by Seller to exercise the same.

PACKAGE — Price on cement packed in paper bags includes the paper bags which are not returnable.

Shipments of bulk cement shall be invoiced and collected for on a basis of track scale weights nearest to point of origin.

CLAIMS — Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgment on original destination freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

Seller reserves the right to select the route and method by which shipments shall be forwarded.

SPECIFICATIONS — The cement shipped under this quotation shall conform to the present standard specifications for Portland Cement of the American Society for Testing Materials. No other Warranty is made in respect thereof. Seller having no control over the use of cement, will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal or other material, governmental interference or regulation, delays in transportation, or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

WEIGHT—Price shown for Standard Portland—Plastolith (air-entraining)—High Early Strength Cements is per standard barrel of 376 pounds net. For Masons Cement is per barrel of 280 pounds net.

FREIGHT—Freight charges prepaid by the Seller.

All orders subject to acceptance in writing by

NORTHWESTERN STATES PORTLAND CEMENT COMPANY
General Office — Mason City, Iowa

350

[fol. 351]

DEFENDANT'S EXHIBIT 18

511-3-50-S.P.Co.

Northwestern States Portland Cement Company
MASON CITY, IOWA

Agreement made this _____ day of _____, 19____, between **NORTHWESTERN STATES PORTLAND CEMENT COMPANY,** hereinafter called Seller and _____ hereinafter called Buyer:

Seller hereby sells and agrees to furnish and deliver and Buyer hereby buys and agrees to receive and pay for Northwestern States Portland Cement in the quantity and on the terms and conditions hereinafter set forth.

DESCRIPTION:

QUANTITY: _____

The purpose of this contract is to cover the purchase and sale of _____ the Portland Cement required to complete the work hereinbefore described, whether more or less than the quantity stated herein.

Buyer represents that the aforesaid number of barrels of cement will be used in the construction of the above-described work and agrees that no portion of such cement will be used for any other purpose without the written consent of Seller. If any of the cement shipped hereunder is reconsigned or diverted by Buyer from the place of delivery specified herein or used for any other purpose, Seller may cancel this contract and refuse to ship any more cement and Buyer agrees to pay Seller's market price at the place of final destination for such cement as has been diverted by Buyer from the place of delivery specified herein or has been used by Buyer for any other purpose than the purpose above specified; Buyer remaining liable for all unpaid accounts.

DESTINATION: F. O. B. CARS _____

SHIPMENTS: Shipment not to exceed _____ barrels in any one calendar month, except by special agreement.

All shipments to be completed prior to _____

Buyer shall give Seller shipping instructions in writing a reasonable time before shipments are to be made. If Buyer fails to order shipment within the time specified Seller shall have the right to extend the time for delivery of such cement, but shall not be obligated to do so, except at its option.

PRICE: Per standard barrel of 376 pounds net, in paper bags in carload lots f. o. b. above destination _____ $_____

Per standard barrel of 376 pounds net, in bulk in carload lots f. o. b. above destination _____ $_____

All shipments made on this contract will be at the current destination price of Seller on the date of shipment, if this price is below the contract destination price mentioned herein.

TERMS OF PAYMENT: On approved credit net cash 30 days from date of invoice, or 10 cents per barrel discount for cash in 15 days from date of invoice.

If at any time the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, it reserves the right to require payments in advance or satisfactory security or guarantee that invoices will be promptly paid when due.

If Buyer fails to comply with terms of payment, or with any of the other terms of sale, Seller reserves the right to cancel unfilled portion of this contract, without notice, Buyer remaining liable for all unpaid accounts. No waiver of such right shall be implied from any failure by Seller to exercise the same.

PACKAGE: Price on cement packed in paper bags includes the paper bags which are not returnable.

Shipments of bulk cement shall be invoiced and collected for on a basis of track scale weights nearest to point of origin.

CLAIMS: Claims for loss or damage will not be considered unless supported by seal record and railroad agent's acknowledgement on original destination freight bill. Freight overcharge claims must be accompanied by original receipted freight bill.

Seller reserves the right to select the route and method by which shipments shall be forwarded.

SPECIFICATIONS: The cement shipped under this contract shall conform to the present standard specifications for Portland Cement of the American Society for Testing Materials. No other Warranty is made in respect thereof. Seller having no control over the use of cement will not, therefore, guarantee finished work in which it is used, nor shall the Seller be responsible for the condition of cement after delivery to Buyer. Any charges incident to inspection or tests made by or on behalf of Buyer to determine compliance with specifications shall be paid by Buyer.

Seller shall not be liable to Buyer for any delays in manufacturing, shipping or delivering said cement, caused by fire, strikes, lockouts, differences with workmen, accidents, war, insurrection, inability to secure cars, coal or other material, governmental interference or regulation, delays in transportation, or contingencies beyond Seller's control; and during the time of such delays Seller shall have the right to prorate among its various customers such cement as it may be able to manufacture and ship.

If the Seller is prevented from delivering cement within the time agreed upon, by any of the above mentioned causes, it shall not be required to make shipment after final date of delivery, unless it so elects.

This contract is not assignable by Buyer without the consent of Seller in writing.

_____
(Buyer's Signature)

By _____

No. _____

NORTHWESTERN STATES PORTLAND CEMENT CO.,

By _____
Sales Manager

351

[fol. 352]

DEFENDANT'S EXHIBIT 19

S26-2M-1-45-S.P.CO.

Ter.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY

CONTRACT RECORD

Contract No.

Invoice to

Address

Customer's No.

Date

Ship to

Destination

Route Via

Special Instructions

Expiration

PORTLAND HIGH EARLY MASONS

Barrels

Price 36826

Net

Rate

To be tested by

Description of work

35r

[fols. 354, 355]

S26-2M-1-45-S.P.CO.

Ter.

NORTHWESTERN STATES PORTLAND CEMENT COMPANY

CONTRACT RECORD

Contract No.

Invoice to

Customer's No.

Address

Date

Ship to

Expiration

Destination

	PORTLAND	HIGH EARLY	MASONS
Barrels			
Price			
Net			
Rate			

Route Via

Special Instructions

To be tested by

Description of work

354

SHIPPING INSTRUCTIONS							BARRELS SHIPPED									CAR NUMBER	ROUTING
DATE	LOAD ORDER NUMBER	DATE TO LOAD		BARRELS			DATE	PORTLAND			HIGH EARLY			MASONS			
				PORTLAND	HIGH EARLY	MASONS		TODAY	TOTAL	PRICE	TODAY	TOTAL	PRICE	TODAY	TOTAL	PRICE	

(355)

DEFENDANT'S EXHIBIT 20

S-11-A-5-50-S P.Co.

Portland Cement Contract in Triplicate

herein called Seller, agrees to furnish and deliver and

herein called the Purchaser, purchases and agrees to receive and pay for Northwestern States Portland Cement in the quantity and on the terms and conditions hereinafter specified:

QUANTITY: All the Portland cement required in construction of

but not to exceed estimated quantity of ( ) barrels.

USE: Purchaser expressly agrees that all cement delivered by Seller under this contract will be used exclusively in above mentioned contract work and agrees to furnish Seller upon request evidence satisfactory to Seller of use of cement delivered under this contract. In the event cement delivered under this contract is diverted by Purchaser to other uses, Purchaser agrees to pay Seller for such cement at Seller's current retail price at time such diversion was made and Seller reserves the right to cancel, without notice, unfilled portion of this contract, Purchaser remaining liable for all unpaid items shipped prior to cancellation.

PRICE: Including package dollars and cents ($)
per standard barrel of 376 pounds net, in carload lots F. O. B. Cars

PRICE: Including package dollars and cents ($)
per standard barrel of 376 pounds net, F. O. B. Seller's warehouse at

SHIPMENTS: Shipments not to exceed barrels in any one calendar month, except by special agreement. All shipments to be completed prior to 19
The Purchaser shall give the Seller shipping instructions a reasonable time before shipments are to be made, and the Seller shall not be responsible for delays in manufacturing or shipping caused by strikes, differences with employes, accidents, fires, floods, failure of transportation lines to furnish cars, delays in transportation, or other contingencies not under its control.

If the Seller is prevented from delivering cement within the time agreed upon, by any of the above mentioned causes, it shall not be required to make shipment after final date of delivery, unless it so elects.

If Purchaser fails to take cement within the time agreed upon, the Seller reserves the right to extend time for delivery, but shall not be obliged to do so.

TERMS OF PAYMENT:

Sacks to be paid for at same time as cement.

If credit of Purchaser is not satisfactory, or if at any time the financial responsibility of Purchaser becomes impaired, or the account becomes unsatisfactory to the Seller, it reserves the right to require payments in advance and pending same, may withhold shipment.

If Purchaser fails to comply with terms of payment or with any of the other conditions of sale, the Seller reserves the right to cancel, without notice, unfilled portion of any contract or orders, the Purchaser remaining liable for all unpaid items shipped prior to the cancellation.

PACKAGES: Prices on cement packed in paper bags includes the paper bags which are not returnable.

SPECIFICATIONS: The cement is to conform to Standard Specifications for Portland Cement adopted by the American Society for Testing Materials. Any claim that cement does not conform to Standard Specifications must be made immediately upon the receipt of the shipment and before any of the cement has been used. The use of the cement shipped hereunder shall constitute an acceptance thereof to the extent of such use, and such cement so used shall be conclusively deemed to conform to Standard Specifications. The Seller makes no warranty other than stated herein. Any charges incident to inspection or tests made by or on behalf of Purchaser to determine compliance with specifications shall be paid by Purchaser.

The Seller cannot be held for loss or damage while cement is in transit or storage. Should loss or damage occur while cement is in transit the Seller will make claim against the transportation company for account of Purchaser upon presentation by Purchaser of freight bill bearing railroad agent's notation of such loss and damage and such other evidence as is necessary to substantiate claim.

ASSIGNMENT OF CONTRACT: This contract shall not be assigned by the Purchaser, except upon written assent thereto by the Seller.

OTHER CONDITIONS:

Executed by the parties hereto this day of 19 at

(Purchaser's Signature)

By

No.

(Seller's Signature)

By

356

[fol. 357]

DEFENDANT'S EXHIBIT 26

539-3M-1-43-S.P.Co.

Northwestern States Portland Cement Company

MASON CITY, IOWA

ADVERTISING REQUISITION

Date _____

Town _____

Salesman _____

Please furnish (Firm) _____

at _____

Following Advertising: Check if Old Customer ☐ New Customer ☐ Prospect ☐

✓	QUANTITY	DESCRIPTION
		* DEALERS LETTERHEADS
		No. 1 Farm
		No. 2 Home
		* CONTRACTOR LETTERHEADS
		No. 3 House
		No. 4 Bridge Contractor's
		Envelopes (small)
		Envelopes (large)
		FOLDERS
		Concrete
		Septic Tanks
		Sidewalks
		Troughs and Tanks
		Concrete Floors
		10 Sax Northwestern
		Feeding Floors
		F132-A Concrete Floors in Farm Buildings
		F132-B Concrete Feeding Floors
		F132-C Concrete Laying House
		F132-D A Small Farrowing House
		F132-E How to Build out Rats
		F132-F Concrete Footings and Foundation Walls
		F132-G Concrete Masonry Farm Buildings
		F132-H A Concrete Milk-Cooling Tank
		F132-J Concrete Dairy Barn Floors
		F132-K One Room Concrete Milk House
		F132-L Low Cost Farm Structures
		F132-M Tanks and Troughs
		F132-N Farm Concrete in Cold Weather

✓	QUANTITY	DESCRIPTION
		MISCELLANEOUS
		Blotters
		Memo Pads
		Time Books
		Pencils (No. 2—soft)
		Pencils (No. 3—hard)
		Paper Weights
		Warehouse Signs
		Truck Signs
		Matches
		Masons Material—Estimator
		BOOKLETS
		F18 Plans for Concrete Farm Buildings
		F10 Concrete Handbook of Permanent Farm Construction
		Masons Cement
		How to Mix Masons Cement
		Estimating Table (Book)
		Estimating Table (Card)

*ATTACH COPY OF CUSTOMER'S LETTERHEAD

LEAVE COPY OF ORDER WITH CUSTOMER

357

[fol. 358]

DEFENDANT'S EXHIBIT 28

Form S18-5M-6-49 S.P.Co.

36828

Northwestern States Portland Cement Co.

General Letter

FROM
SALES DEPARTMENT
MASON CITY, IOWA

December 18, 1950

DEAR SIR:

We have new quotations in the mail to the trade today effective January 1, 1951 on the following basis.

Standard Portland and Plastolith cement $2.60 per barrel in bulk f.o.b. our mill.

Standard Portland and Plastolith cement $2.90 per barrel including paper bags f.o.b. our mill.

High Early Strength cement 50¢ per barrel higher than above price.

Masons Cement $2.75 per barrel including paper bags f.o.b. our mill.

Please acknowledge receipt.

Yours truly,

G. B. Pray
SALES MANAGER

DG:DA

[fol. 359]

PLAINTIFF'S EXHIBIT Q

February 8, 1950

Northwestern States Portland Cement Company
Mason City
Iowa

Gentlemen:

We have written you at various times requesting that either file State corporation income tax returns for the years ending November 30, 1933 through November 30, 1948. However, we have not received such returns.

Under authority of Section 290.47 of the Income Tax Act, we have prepared returns for you from such information as we could obtain and have assessed a tax on the basis thereof for each year. This section also provides that any return made by us because of your failure to file a return shall be prima facie correct and valid and you shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto.

We are enclosing statements of account showing the amount of tax, penalty and interest assessed for each year. Kindly send remittance for the full account shown on these statements within ten days from the date of this letter, or the accounts will be given to the Attorney General with instructions to bring immediate suit against you for the recovery of these liabilities.

Very truly yours,

G. HOWARD SPAETH
Commissioner of Taxation

By
Wm. C. Barkman, Director
Income Tax Division

PSJ:ds
Enc.
Reg.

359

[fol. 360]

Plaintiff's Exhibit R

36[illegible]

1

R

October 21, 1949

Northwestern States Portland Cement Company
First National Bank Building
Mason City, Iowa

In re: 1943 to 1948, Inclusive

Gentlemen:

Section 33 of the Minnesota Income and Franchise Tax Act requires every corporation to file a Minnesota State income and franchise tax return if its taxable income was in excess of $1,000 or if its gross income was in excess of $5,000. Therefore, even if net income was less than $1,000, a return still must be filed if gross income was in excess of $5,000.

According to our records you have not filed Minnesota State income and franchise tax returns for the years shown above. DEMAND is hereby made upon you under Section 44 of the Act to file returns for the periods shown above within thirty days from the date of this letter and to pay the full amount of tax shown to be due on each return together with the penalty and interest imposed by the Act.

Corporations whose gross income was less than $5,000 or whose taxable net income was less than $1,000 are required to execute and file the enclosed affidavits.

A corporation engaged in the business of mining or producing iron ore, claiming exemption under Section 5 (b) of the Act, must file a complete return and in addition thereto an affidavit on Form 120 (b) relative to that part of the income claimed as exempt because of its being derived exclusively from mining or producing iron ore.

Each corporation claiming exemption under Section 5 must file an application for exemption on proper forms to be obtained from this Division. A return must be filed until this claim for exemption has been approved.

If you fail to file the returns or the affidavits within thirty days from the date of this demand, returns will be prepared for you for these periods by the Commissioner of Taxation from the best available information and an assessment of tax will be made on the basis thereof together with the penalties provided by Section 49 of the Act.

Very truly yours,

G. HOWARD SPAETH
Commissioner of Taxation

By
Wm. G. Burkman, Director
Income Tax Division

PJB:ss
[redacted]
Encl. Sent under separate cover.
516 (a)
[redacted] mail.

360

[fol. 361]

PLAINTIFF'S EXHIBIT S

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated January 31, 1952 in the name of Northwestern State Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering a 1952 Chieftan Deluxe 4door with serial number P8WS3082, 1952 registration number 961532.

Dealer's Report of Sale on reverse side of application covering same vehicle, executed to show sale from Lake Street Pontiac, Inc., Minneapolis, Minnesota, to Northwestern States Portland Cement Company under date of January 31, 1952.

Application for Registration dated October 15, 1952 in the name of Northwestern States Portland Cement Company, covering same vehicle, 1953 registration number 85087.

36828

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this 29th *day of* October, *A. D. 19* 54.

Mrs. Mike Holm
Secretary of State

342

[fol. 362]

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Here Attach Draft, Cashier's Check or Money Order.

9613532

Do Not Write in This Space

RECD 1
31

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA
County of Henn } ss. Date 1-31, 1952

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1951 Minnesota Registration No.

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. "PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS X
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. "HOUSE TRAILER": CLASS "HZ" ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00
801-2000	15.20	15.00	12.50	10.00	7.50
2001-2200	16.80	15.00	12.50	10.00	7.50
2201-2400	18.40	15.00	12.50	10.00	7.50
2401-2600	20.00	15.00	12.50	10.00	7.50
2601-2800	21.60	16.20	12.50	10.00	7.50
2801-3000	23.20	17.40	12.50	10.00	7.50
3001-3200	24.80	18.60	12.50	10.00	7.50
3201-3400	26.40	19.80	13.20	10.00	7.50

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
3401-3600	828.00	$21.00	$14.00	$10.00	$ 7.50
3601-3800	33.30	24.98	16.65	10.00	8.33
3801-4000	39.00	29.25	19.50	10.00	9.75
4001-4200	45.10	33.83	22.55	11.28	11.28
4201-4400	51.60	38.70	25.80	12.90	12.90
4401-4600	58.50	43.88	29.25	14.63	14.63
4601-4800	65.80	49.35	32.90	16.45	16.45
4801-5000	73.50	55.13	36.75	18.38	18.38
Over 5000	75.00	56.25	37.50	18.75	18.75

3. "PASSENGER CAR UTILITY TRAILER": CLASS "SZ" ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1953).
4. "MOTORCYCLE": CLASS "MC" ____
   Does it have a side car or three wheels? ____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. "MOTOR SCOOTER," "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR": CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.
6. "SNOWMOBILE": CLASS "S" ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

7. MAKE Pontiac
8. SERIAL NO. P8K5 3052
9. YEAR & MODEL 1952 - 24
10. TYPE Chieftain Dely 4Dr
11. Check kind of transmission: Standard ☑ Other ☐
12. No. of Cyl. 8 Pass. Cap. 5

Weight 3378 3377 lbs.

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "SZ" trailer give gross weight of load and vehicle.

ARREARS { Tax ____ Fees ____
1952 Tax 26.40
1952 Fees ____
Total ____

Attach Registration Certificate Here. If not attached, explain why.

Please do not send personal check

SEE INSTRUCTIONS ON REVERSE SIDE HEREOF

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X Northwestern States Portland Cement Co (Owner must sign here) Northwestern States Portland Cement Co (Print or type name here)
14. I RESIDE IN THE COUNTY OF Henn
15. I GET MY MAIL AT 1018 - Roanoke Bldg. (Postoffice Address (Street or R.F.D.)) Minneapolis (City) Minn (P.O. Zone) (State)

CERTIFICATE will be sent to this address, be sure it is clear.

SEAL.

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this 31 day of January, 195 2

Notary Public Hennepin County, Minn. My commission expires

JOHN TRITCHLER
Notary Public, Hennepin County, Minn
My Commission Expires Dec. 8, 1958.

If plates are not to be sent to owner as above give name and address here ____

(Postoffice Address (Street or R.F.D.)) (City) (P.O. Zone) (State)

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 363]

Please do not send personal check

DO NOT SEND CURRENCY. If you do, it will be at your own risk. Remit by certified check, American Express or U. S. Postal money order, or bank draft. To avoid delay, do not send personal checks. Applications with which personal checks are submitted will be held up for 12 days after deposit, for it sometimes takes that long to get reports on checks that do not clear. Send **SEPARATE CHECKS** for **EACH APPLICATION** to avoid return of application. Especially when more than one application is forwarded in the same envelope, it is well to put the old registration number or applicant's name on check or draft so as to be sure that it will be connected with the right application.

Do Not Write in This Space. For Office Use Only.

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ (Date) 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? _____ (Date) Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? _____ 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____ (Date)

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? _____ (Date)

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased Lake St. Pontiac Inc

Mpls (City) Minn (State) 23. Date purchased 1-31, 1952

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA
County of Henn } ss.

_____ being duly sworn says: That he is authorized to sign as agent for Lake St Pontiac Inc, licensed as dealer for 52 (Year) under No. 0969; that said licensed dealer on 1-31-52 (Date) sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from Pontiac Div. Gen'l Motors (Whom) Pontiac Mich (Address) on 1-9-52 (When) by Truck-Boat-Truck - Clark Transport (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used.); that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is clearly noted in this application for registration.

Signature _____

Subscribed and sworn to before me this 31 day of January, 1952

_____ SEAL

Notary Public _____ County, Minn. My commission expires _____

Notary Public, Hennepin County, Minn.
My Commission Expires Dec. 8, 19[illegible]

363

Form AA

DO NOT SEND PERSONAL CHECK

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

Attach Draft, Cashier's or Money Order.

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

Answer all questions on this side pertinent to the registration of your vehicle and, if the vehicle is a new one, a used one from another state or a home made one not previously registered, answer the questions pertinent thereto on the reverse side hereof.

STATE OF MINNESOTA } ss.
County of Hennepin

To the Registrar of Motor Vehicles
St. Paul, Minnesota
Date 10-15 1952

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein, which is hereby listed for registration and taxation under the laws of the State of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

REC'D
OCT 15
1952

Give 1952 Minnesota

Registration No. 461752

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

Attach Registration Certificate Here. If not attached, explain why.

CHECK CLASS IN WHICH YOU WISH TO REGISTER

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE" CLASS:** "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons. Tax: Find it by weight, table below (Item 6). ____

2. **"HOUSE TRAILER" CLASS:** "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called. Tax: Find it by weight, table below (Item 6). "HZ" ____

3. **"PASSENGER CAR UTILITY TRAILER" CLASS:** Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire. **Have you read the law above and do you certify that your trailer meets all the conditions prescribed therein?** ____ **(Must be answered).** Tax: $2 per biennium, $1 for last year thereof (1953). "SZ" ____

4. **"MOTORCYCLE" CLASS:** Does it have a side car or three wheels? ____ Tax: Without side car $3, with side car or 3 wheels, $5. "MC" ____

5. **"MOTOR SCOOTER", "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR" CLASS:** Encircle the one you are registering. Tax: $1. "MBS" ____

7. MAKE Pont

8. SERIAL NO. 1 8 K S 3 1 5 2

9. YEAR & MODEL 5 2 Chief Dlx

10. TYPE 44

11. Check kind of transmission:
Standard ☐ Standard with overdrive ☐ Other ☐
"Other" includes Automatic, Dynaflow, Ford-o-matic, Gyromatic, Hydra-matic, Merc-o-matic, Powerglide, Prestomatic, Tip-toe Hydraulic, and Ultramatic.

12. No. of Cyl. ____ Pass. Cap. ____

Weight 3378 lbs.

If passenger automobile, ambulance, hearse, house trailer, or station wagon, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.)

(DO NOT WRITE IN THIS SPACE)

Arrears { Tax ____ Fees ____

1953 Tax 2.60 FC

1953 Fees ____

Total ____

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. X [signature] (Owner must sign on above line opposite X)

Northwestern State Bank
(Print or type name here)

14. Hennepin (County of residence)

15. 1010 Ranchette Bldg
Postoffice Address (Street or R.F.D.)

Minneapolis Minn
(City) (P.O. Zone) (State)

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this ____ day of ____, 195

SEAL

Notary Public ____ County, Minn.

My commission expires ____

6. PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$5.00	3401-3600	$28.80	$21.60	$14.40	$10.00	$ 7.50
801-2000	15.20	15.00	12.50	10.00	7.50	3601-3800	33.30	24.98	16.65	10.00	8.33
2001-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.80	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75

If plates are not to be sent to owner as in item 15 give name and address below

Name ____

Postoffice Address (Street or R.F.D.) ____

City and State ____

344

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fols. 365, 365a]

PLAINTIFF'S EXHIBIT T

United States of America.

36828

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated April 24, 1951 in the name of Lake Street Pontiac, Inc., 720 East Lake Street, Minneapolis, Minnesota, covering a 1951 Pontiac Chieftan Deluxe 4door Sedan with serial number P8UH50547, 1951 registration number 938872.

Dealer's Report of Sale on reverse side of application covering same vehicle, executed to show sale from Lake Street Pontiac, Inc., Minneapolis, Minnesota to Lake Street Pontiac, Inc. under date of April 24, 1951. Also showing posting of transfer to Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota under date of May 25, 1951, Transfer No. B 71697.

Bill of Sale covering same vehicle executed to show transfer of ownership from Lake Street Pontiac, Inc. to Northwestern States Portland Cement Company under date of May 25, 1951.

Application for Transfer on lower half of bill of sale form covering same vehicle, executed by Wm. R. Wilkins for Northwestern States Portland Cement Company with date of acknowledgment May 25, 1951.

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this

29th *day of* October,

A. D. 19 54.

Secretary of State

365

Application for Registration dated October 5, 1951 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering a 1951 Pontiac Chieftan Deluxe 4door with serial number P8UH50547, 1952 registration number 30467.

Application for Registration dated October 15, 1952 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering same vehicle, 1953 registration number 85086.

365a

Here Attach Draft, Cashier's Check or Money Order.

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Do Not Write in This Space

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA
County of Hennepin } ss. Date April 24, 1951

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1950 Minnesota Registration No. New

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. "PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS ____
"Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
Encircle above the one you are registering. Tax table below.

2. "HOUSE TRAILER": CLASS "HZ" ____
"House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50	3601-3800	$33.30	$24.98	$16.65	$10.00	$ 8.33
2000-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.00	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.00	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75
3401-3600	28.00	21.00	14.00	10.00	7.50						

3. "PASSENGER CAR UTILITY TRAILER": CLASS "SZ" ____
Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
Tax: $2 per biennium, $1 for last year thereof (1951).

4. "MOTORCYCLE": CLASS "MC" ____
Does it have a side car or three wheels? ____
Tax: Without side car $3, with side car or 3 wheels $5.

5. "MOTORIZED BICYCLE" OR "MOTOR SCOOTER": CLASS "MBS" ____
Encircle the one you are registering. Tax: $1.

6. "SNOWMOBILE": CLASS "S" ____
Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

7. MAKE Pontiac

8. SERIAL NO. P8UH 50547

9. YEAR & MODEL '51 Chftn.

10. TYPE Dlx. 4Dr. Sed.

11. Check kind of transmission: Standard ☐ Other ☒

12. No. of Cyl. 8 Pass. Cap. ____

Weight 3488 lbs.
If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "SZ" trailer give gross weight of load and vehicle.

ARREARS Tax ____ Fees ____
1951 Tax 21.00
1951 Fees ____
Total ____

Attach Registration Certificate Here. If not attached, explain why.

Please do not ... personal check
(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X LAKE STREET PONTIAC INC. Manager (LAKE STREET PONTIAC INC. O. L. Olson, Manager)
Owner must sign here (Print or type name here)

14. I RESIDE IN THE COUNTY OF Hennepin

15. I GET MY MAIL AT 720 East Lake Street Minneapolis 7 Minnesota
Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this 24th day of April, 195 2

LEONARD E. KIMBALL
Notary Public Hennepin County, Minn. My Commission Expires Nov. 11, 1953

Notary Public Hennepin County, Minn. My commission expires 11 11 53

If plates are not to be sent to owner as above give name and address here ____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 367]

231572 **Please do not send personal check**

Northwestern States Portland Cement Co
1010 Roanoke Bldg Mpls. 3 Minn.

938872
5-25-51

ink. Remit by certified check, American Express or U. S. Postal money order, or bank
s with which personal checks are submitted will be held up for 12 days after deposit
le not clear. Send SEPARATE CHECKS for EACH APPLICATION to avoid return
warded in the same envelope, it is well to put the old registration number or applicant's
with the right application.

Do Not Write in This Space. For Office Use Only.

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? _____ (Date) Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? _____ (Date) 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____ (Date)

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? _____ (Date)

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased LAKE STREET PONTIAC INC.

Minneapolis, Minnesota 23. Date purchased April 24, 195 1
City State

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA
County of Hennepin } ss

O. L. Olson being duly sworn says: That he is authorized to sign as agent for LAKE STREET PONTIAC INC., licensed as dealer for 1951 (Year) under No. D 365; that said licensed dealer on _____ (Date), sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from Pontiac Motor Division (Whom) Pontiac, Michigan (Address)

April 2, 1951 (When) by Truck, Boat, Truck-- Clark Transport Co. (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used)

that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is clearly noted in this application for registration.

Signature O. L. Olson

Subscribed and sworn to before me this 30th day of April, 195 1

Notary Public Hennepin County, Minn. My commission expires 11 11 52

SEAL

8

ol. 368]

BILL OF SALE. Sold by R. E. Anderson, 460 Rice Street, St. Paul, Minn. Phone: Garfield 3444 Form No. 26

BILL OF SALE

1697

Any erasure or alteration will void this bill of sale.

STATE OF MINNESOTA,

County of Hennepin

IMPORTANT

REGISTRATION NO.
938-872

For One Dollar, _____ and other considerations,

I Lake Street Pontiac, Inc. of 720 East Lake St. Minneapolis Grantor

on the 25th day of May 1951, sold, assigned the tax paid to, and gave possession of,

Make	Serial No.	Motor No.	Year	Type
Pontiac	P8UH 50547	P8UH 50547	1951	Chftn. Dlx. 4Dr.

to Northwestern States Portland Cement Co. (Name of Purchaser) of 1010 Roanoke Bldg. Minneapolis (Address of Purchaser) Grantee

clear of all liens and encumbrances except None

Give reason why you are using this blank instead of a registration card to make the transfer.

CHECK ANSWER BELOW.

I did not receive the card _____ It has been lost _____

It has been destroyed _____ It has been turned in with application for re-registration _____

It has been sent in to make a transfer _____

Subscribed and sworn to before me this

25th day of May 1951

Leonard W. Kimball

Notary Public Hennepin County.

My commission expires 11-14-53

Lake Street Pontiac, Inc.

Signature of Seller

By O. R. Anderson

APPLICATION FOR TRANSFER

STATE OF MINNESOTA,

County of Hennepin

M. V. DEPT. MAY 29 1951 RECEIVED

On the 25th day of May 1951, I bought the above described motor vehicle from Lake Street Pontiac, Inc. (Name of Seller) of 720 East Lake St. Minneapolis (Address of Seller) have viewed it carefully and know that it is correctly described and now ask that the registration be transferred to me.

Subscribed and sworn to before me this

25th day of May 1951

Leonard W. Kimball

Notary Public Hennepin County.

My commission expires 11-14-53

Northwestern States Portland Cement Co.

Signature of Purchaser

By Sam R. Dilkis

Address 1010 Roanoke Bldg.

If this truck will be used only in Class T, mark a cross _____

If this truck will be used in Class X, designate your zone of operation _____

If you desire to register this truck in Class Y, give gross weight _____

[fol. 369]

Form AA

Here Attach Draft, Cashier's Check or Money Order.

APPLICATION FOR MOTOR VEHICLE REGISTRATION

304667

Do Not Write in This Space

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

REC'D OCT 5 1951

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA
County of Ramsey } ss. Date Oct 5, 1951

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1951 Minnesota Registration No. 435-812

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. "PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS X
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. "HOUSE TRAILER": CLASS "HZ" ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00	3401-3600	$28.00	$21.00	$14.00	$10.00	$ 7.50
801-2000	15.20	15.00	12.50	10.00	7.50	3601-3800	33.30	24.98	16.65	10.00	8.33
2001-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.60	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75

3. "PASSENGER CAR UTILITY TRAILER": CLASS "SZ" ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1953).
4. "MOTORCYCLE": CLASS "MC" ____
   Does it have a side car or three wheels? ____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. "MOTOR SCOOTER," "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR": CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.
6. "SNOWMOBILE": CLASS "S" ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

7. MAKE Ford
8. SERIAL NO. 8U4-5054
9. YEAR & MODEL 1951-Ch
10. TYPE Pick up
11. Check kind of transmission: Standard ☐ Other ☐
12. No. of Cyl. ____ Pass. Cap. ____

Weight 3402 lbs.

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "SZ" trailer give gross weight of load and vehicle.

ARREARS { Tax ____ Fees ____
1952 Tax ____
1952 Fees ____
Total ____

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at State Capitol.

13. OWNER X [signature] [illegible]
    Owner must sign here (Print or type name here)
14. I RESIDE IN THE COUNTY OF [illegible]
15. I GET MY MAIL AT [illegible]
    Postoffice Address (Street or R.F.D.) City P.O. Zone State
    CERTIFICATE will be sent to this address; be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this ____ day of ____, 195__

Notary Public ____ County, Minn. My commission expires ____

If plates are not to be sent to owner as above give name and address here ____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

Attach Registration Certificate Here. If not attached, explain why.

Please do not [illegible] personal check

(SEE INSTRUCTIONS REVERSE SIDE HEREOF)

Form AA

DO NOT SEND PERSONAL CHECK

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

How—Attach Draft, Cashier's or Money Order.

When Registration Certificate Here. If not attached, Mail Registration this way.

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

Answer all questions on this side pertinent to the registration of your vehicle and, if the vehicle is a new one, a used one from another state or a home made one not previously registered, answer the questions pertinent thereto on the reverse side hereof.

STATE OF MINNESOTA } ss.
County of Hennepin

To the Registrar of Motor Vehicles
St. Paul, Minnesota
Date 10-15 1952

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is hereby listed for registration and taxation under the laws of the State of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

CHECK CLASS IN WHICH YOU WISH TO REGISTER

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. "PASSENGER AUTOMOBILE" CLASS: ✓
"Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
Tax: Find it by weight, table below (Item 6).

2. "HOUSE TRAILER" CLASS: "HZ"_____
"House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
Tax: Find it by weight, table below (Item 6).

3. "PASSENGER CAR UTILITY TRAILER" CLASS: "$Z"_____
Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
Have you read the law above and do you certify that your trailer meets all the conditions prescribed therein?_____.
(Must be answered).
Tax: $2 per biennium, $1 for last year thereof (1953).

4. "MOTORCYCLE" CLASS: "MC"_____
Does it have a side car or three wheels?_____
Tax: Without side car $3, with side car or 3 wheels, $5.

5. "MOTOR SCOOTER", "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR" CLASS: "MBS"_____
Encircle the one you are registering. Tax: $1.

(DO NOT WRITE IN THIS SPACE)

6 PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$5.00	3401-3600	$30.00	$21.00	$14.00	$16.00	$ 7.00
801-2000	15.20	15.00	12.50	10.00	7.50	3601-3800	33.50	24.00	16.00	10.00	8.35
2001-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.00	18.00	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	34.00	22.00	11.25	11.25
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.00	38.70	25.00	12.00	12.00
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.00	29.25	14.00	14.00
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.50	49.25	32.00	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	78.00	58.25	37.50	18.75	18.75

If plates are not to be sent to owner as in item 15 give name and address below

Name_____

Postoffice Address (Street or R.F.D.)_____

City and State_____

Do Not Write in This Space

REC'D OCT 15 1952

Give 1952 Minnesota Registration No. 30467

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

7. MAKE Pont
8. SERIAL NO. P8VH50547
9. YEAR & MODEL 51 Ch Six
10. TYPE 4d
11. Check kind of transmission:
Standard ☐ Standard with overdrive ☐ Other ☐
"Other" includes Automatic, Dynaflow, Ford-o-matic, Cyromatic, Hydra-matic, Merc-o-matic, Powerglide, Prestomatic, Tip-toe Hydraulic, and Ultramatic.
12. No. of Cyl._____ Pass. Cap._____

Weight 3488 lbs.
If passenger automobile, ambulance, hearse, house trailer, or station wagon, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.)

Arrears { Tax_____ Fees_____
1953 Tax 2.00
1953 Fees_____
Total_____

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. X Co by Wm P Wilkerson - Dealer
(Owner must sign on above line opposite X)

Northwestern Motor Co Portland Cement Co
(Print or type name here)

14. Hennepin
(County of residence)

15. 1010 Roanoke Bldg
Postoffice Address (Street or R.F.D.)
Minneapolis 2 Minn
(City) (P.O. Zone) (State)

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this_____ day of_____, 195_

SEAL

Notary Public_____ County, Minn.
My commission expires 11 7 56

376

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 371]

PLAINTIFF'S EXHIBIT U

36828

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated February 25, 1952 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering a 1952 Chevrolet, Model 2103, Styline Deluxe 4door with serial number 21KKA6703, 1952 registration number 963878.

Dealer's Report of Sale on reverse side of application covering same vehicle, executed to show sale from Grossman Chevrolet Company, Inc., Minneapolis, Minnesota to Northwestern States Portland Cement Company under date of February 25, 1952.

Application for Registration dated October 15, 1952 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering same vehicle, 1953 registration number 85088.

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this

29th *day of* October,

A. D. 19 54.

Mrs. Mike Holm

Secretary of State

371

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Here Attach Draft, Cashier's Check or Money Order.

Do Not Write in This Space

FEB 25 1952

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA
County of Henn } ss. Date 2/25/52, 195__

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE":** CLASS Y
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. **"HOUSE TRAILER":** CLASS "HZ" ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00	3401-3600	$28.00	$21.00	$14.00	$10.00	$ 7.50
801-2000	15.20	15.00	12.50	10.00	7.50	3601-3800	33.30	24.98	16.65	10.00	8.33
2001-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.60	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75

3. **"PASSENGER CAR UTILITY TRAILER":** CLASS "SZ" ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1953).
4. **"MOTORCYCLE":** CLASS "MC" ____
   Does it have a side car or three wheels? ____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. **"MOTOR SCOOTER," "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR":** CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.
6. **"SNOWMOBILE":** CLASS "S" ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

Give 1951 Minnesota Registration No. ____

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

7. MAKE Chev.
8. SERIAL NO. 21KKA6703
9. YEAR & MODEL 1952-2103
10. TYPE Sty 4d Dlx
11. Check kind of transmission: Standard ☐ Other ☒
12. No. of Cyl. 6 Pass. Cap. 6

Weight 3[illegible] 3150 lbs.

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "SZ" trailer give gross weight of load and vehicle.

ARREARS	Tax	
	Fees	
1952 Tax		24.20
1952 Fees		
Total		24.20

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X Northwestern States Portland Cement Co
    Owner must sign here By Wm. E. Wilkins Dist Mgr. (Northwestern States Portland Cement Co
    (Print or type name here)
14. I RESIDE IN THE COUNTY OF Henn
15. I GET MY MAIL AT 1010 Roanoke Bldg. Mpls Minn
    Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

84 SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this 25 day of Feb, 1952

E. H. Pitzer
Notary Public, Hennepin County, Minn.
Commission Expires Jan. 14, 1955

Notary Public ____ My commission expires ____

If plates are not to be sent to owner as above give name and address here ____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

Please do not use personal check

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

317

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 373]

Please do not send personal check

DO NOT SEND CURRENCY. If you do, it will be at your own risk. Remit by certified check, American Express or U. S. Postal money order, or bank draft. To avoid delay, do not send personal checks. Applications with which personal checks are submitted will be held up for 12 days after deposit, for it sometimes takes that long to get reports on checks that do not clear. Send SEPARATE CHECKS for EACH APPLICATION to avoid return of application. Especially when more than one application is forwarded in the same envelope, it is well to put the old registration number or applicant's name on check or draft so as to be sure that it will be connected with the right application.

Do Not Write in This Space. For Office Use Only

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? _____ (Date) Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? _____ (Date) 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? _____ (Date)

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased Grossman Chevrolet Co. Inc

Mpls (City) – Minn (State) 23. Date purchased 2/25/52, 195__

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA
County of Henn } ss.

J.P. Bechtle being duly sworn says: That he is authorized to sign as agent for Grossman Chev. Co. Inc, licensed as dealer for 1952 (Year) under No. 325;

that said licensed dealer on 2/25/52 (Date), sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from Chevrolet Motor Division (Whom) Janesville, Wisconsin (Address)

2/6/52 (When) by W.R. Arthur (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used.);

that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is clearly noted in this application for registration.

Signature J P Bechtle

Subscribed and sworn to before me this 25th day of Feb, 195 2

SEAL

Notary Public _____ County, Minn. My commission expires _____

373

Form AA

DO NOT SEND PERSONAL CHECK

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

Here Attach Draft, Cashier's or Money Order.

Attach Registration Certificate Here. If not attached, explain why.

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

Answer all questions on this side pertinent to the registration of your vehicle and, if the vehicle is a new one, a used one from another state or a home made one not previously registered, answer the questions pertinent thereto on the reverse side hereof.

STATE OF MINNESOTA } ss.
County of Hennepin

To the Registrar of Motor Vehicles
St. Paul, Minnesota
Date Oct 15 1952

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is hereby listed for registration and taxation under the laws of the State of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

CHECK CLASS IN WHICH YOU WISH TO REGISTER

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE" CLASS:** "P" X
"Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
Tax: Find it by weight, table below (Item 6).

2. **"HOUSE TRAILER" CLASS:** "HZ" ____
"House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
Tax: Find it by weight, table below (Item 6).

3. **"PASSENGER CAR UTILITY TRAILER" CLASS:** "SZ" ____
Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
Have you read the law above and do you certify that your trailer meets all the conditions prescribed therein? ____
(Must be answered).
Tax: $2 per biennium, $1 for last year thereof (1953).

4. **"MOTORCYCLE" CLASS:** "MC" ____
Does it have a side car or three wheels? ____
Tax: Without side car $3, with side car or 3 wheels, $5.

5. **"MOTOR SCOOTER", "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR" CLASS:** "MBS" ____
Encircle the one you are registering. Tax: $1.

(DO NOT WRITE IN THIS SPACE)

6. PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$5.00	1401-1600	$28.00	$21.00	$14.00	$10.00	$ 7.50
801-2000	15.00	15.00	12.50	10.00	7.50	1601-1800	33.10	24.98	16.65	10.00	8.33
2001-2200	16.80	15.00	12.50	10.00	7.50	1801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.60	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.30	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	74.50	56.13	36.75	18.38	18.38
3201 & up	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	80.25	37.50	18.75	18.75

If plates are not to be sent to owner as in item 15 give name and address below

Name

Address Street or R F D

City and State

Do Not Write in This Space

REC'D OCT 15 1952 1

Give 1952 Minnesota

Registration No. 963878

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

7. MAKE Chev
8. SERIAL NO. 2KKAL703
9. YEAR & MODEL 52 2103 S/D
10. TYPE 4d
11. Check kind of transmission:
Standard ☐ Standard with overdrive ☐ Other ☐
"Other" includes Automatic, Dynaflow, Ford-o-matic, Gyromatic, Hydra-matic, Merc-o-matic, Powerglide, Prestomatic, Tip-toe Hydraulic, and Ultramatic.
12. No. of Cyl. ____ Pass. Cap. ____

Weight 3265 lbs.

If passenger automobile, ambulance, hearse, house trailer, or station wagon, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.)

JW

Arrears { Tax ____ Fees ____

1953 Tax 2646

1953 Fees ____

Total ____

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. X [signature] Northwestern Photo Prod. Co.
(Owner must sign on above line opposite X)
(Print or type name here)

14. Hennepin
(County of residence)

15. 1010 Roanoke Bldg
Postoffice Address (Street or R.F.D.)
Minneapolis Minn.
(City) (P.O. Zone) (State)

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant

Subscribed and sworn to before me this ____ day of ____, 195

SEAL

Notary Public ____ County, Minn.

My commission expires 11-7-52

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1

[fols. 375, 375a]

PLAINTIFF'S EXHIBIT V

Certified Copies of Documents.

36828

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated October 14, 1948 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering a 1946 Pontiac, Model P6LA, 4door with motor and serial number P6LA6428, 1949 registration number 86067.

Application for Registration dated October 6, 1949 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering same vehicle, 1950 registration number 30696.

Application for Registration dated October 6, 1950 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering same vehicle, 1951 registration number 31577.

Application for Registration dated October 5, 1951 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering same vehicle, 1952 registration number 30468.

Posting of Transfers on reverse side of application covering same vehicle, to Lake Street Pontiac, Inc., 720 E. Lake St.,

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this 29th *day of* October, *A. D. 19* 54.

Wm. V. Holm

Secretary of State

375

Minneapolis, Minnesota under date of February 2, 1952, Transfer No. 90033; and to Gayle O. Testin, 3432 Third Avenue South, Minneapolis, Minnesota under date of April 18, 1952, Transfer No. 165715.

375a

FORM 1H

APPLICATION FOR MOTOR VEHICLE REGISTRATION

USE THIS SIDE ONLY TO RE-REGISTER A VEHICLE REGISTERED IN MINNESOTA LAST YEAR

For new vehicle or one registered elsewhere use other side

AUTOMOBILE—HEARSE—SCHOOL BUS (Cross out two)

To MIKE HOLM, Secretary of State

St. Paul, Minnesota

Date Oct 14 1948

RECD OCT 14 1948

Do not write in this space.

B 850657

Banker's Check or Money Order

Here Attach

Do not Write in This Space. For Office Use Only.

Attach Registration Certificate Here. If not attached, explain why.

Give 1948 Minnesota Registration No.

No. 31751

Make Pont

Motor P62L 6428

Serial P62A 6428

Year & Model 1946- P62A

Type 4 Dr.

SHIPPING WEIGHT
(As shown on registration card)
3335 lbs.

If shipping weight is not available attach official weight ticket.

No. of Cylinders ___ Capacity ___ passengers.

IF VEHICLE IS A BUS is it operated ONLY as a School Bus ___?

(If not, this blank will not serve. Use [illegible] Form 5A)

Manufacturer's Shipping Weight	TAX IN ALL MAKES							
	All 1949 Models	All 1948 Models	All 1947 Models	All 1946 Models	All 1945 Models	All 1944 Models	All 1943 Models	All Older Models
Under 2,000 lbs.	$11.00	$ 9.50	$ 8.25	$ 6.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00
2,000-2,200 lbs., Inc.	17.00	15.50	12.75	10.50	7.65	7.50	7.50	7.50
2,201-2,400 " "	18.00	16.50	13.50	10.50	8.10	7.50	7.50	7.50
2,401-2,600 " "	19.00	17.10	14.25	11.40	8.55	7.50	7.50	7.50
2,601-2,800 " "	20.00	18.00	15.00	12.00	9.00	7.50	7.50	7.50
2,801-3,000 " "	21.00	18.90	15.75	12.60	9.45	7.50	7.50	7.50
3,001-3,200 " "	22.25	20.02	16.69	13.35	10.01	7.50	7.50	7.50
3,201-3,400 " "	23.50	22.05	18.13	15.50	11.42	7.65	7.50	7.50
3,401-3,600 " "	27.25	24.52	20.44	16.35	12.26	8.18	7.50	7.50
3,601-3,800 " "	30.75	27.62	23.06	18.45	13.84	9.23	7.50	7.50
3,801-4,000 " "	34.75	31.25	26.06	20.85	15.64	10.42	7.50	7.50
4,001-4,200 " "	45.00	40.50	33.75	27.00	20.25	13.50	7.50	7.50
4,201-4,400 " "	54.00	48.60	40.50	32.40	24.30	16.20	8.10	7.50
4,401-4,600 " "	57.00	51.30	42.75	34.20	25.65	17.10	8.55	7.50
4,601-4,800 " "	65.00	58.50	48.75	39.00	29.25	19.50	9.75	7.50
4,801 and over	75.00	67.50	56.25	45.00	33.75	22.50	11.25	7.50

ARREARS { Tax ___ Fees 30

1949 Tax 15 —

1949 Fees ___

Total ___

I, the undersigned, hereby apply for registration and affirm that I am the owner of the above described vehicle, and also that I have described it correctly.

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

OWNER X By [illegible] at (Mason City, Iowa)
(Owner Sign Here) (Print or Stamp Name)

I RESIDE IN THE COUNTY OF Hennepin

I GET MY MAIL AT 1010 Roanoke Bldg, Mpls (2) Minn.
Postoffice Address (Street or R.F.D.) City P. O. Zone State

CERTIFICATE will be sent to this address before it is signed.

If plates are not to be sent to owner as above give name and address here ___

B 850657

Postoffice Address (Street or R.F.D.) City P. O. Zone State

Please do not send personal check (SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 377]

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

IMPORTANT: Before filling out application, read other side.

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 21 and 22 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-19 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 20 on reverse side in addition.

Do Not Write in This Space. For Office Use Only.

B

30696

REC'D OCT 6 1949

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA } ss.
County of Kenn } Date Oct 6, 1949

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1949 Minnesota Registration No.
No. 86067

Here Attach Draft, Cashier's Check or Money Order.

Attach Registration Certificate Here If not attached, explain why.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

Have you read the law on the reverse side hereof in regard to that class? _____

1. "PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS ____
   Encircle the one you are registering.
   Tax: Find it by weight, table below.
2. "HOUSE TRAILER": CLASS "HZ" ____
   Tax: Find it by weight, see table below.
3. "PASSENGER CAR UTILITY TRAILER": CLASS "$Z" ____
   Tax: $2 per biennium, $1 for last year thereof.
   (This is new. See law on other side.)
4. "SNOWMOBILE": CLASS "S" ____
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.
5. "MOTORCYCLE": CLASS "MC" ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.
6. "MOTORIZED BICYCLE" OR "MOTOR SCOOTER": CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.

7. MAKE Pont
8. SERIAL NO. P6TA6428
9. MOTOR NO. P6TA 6428
10. YEAR & MODEL 1946-P6TA
11. TYPE 4 Dr.
12. No. of Cyl. _____ Pass. Cap. _____

Weight 3335 lbs.

If passenger automobile, ambulance, hearse, house trailer or snowmobile, give manufacturers shipping weight. (If shipping weight is not available, attach official weight ticket.) For a trailer other than a house trailer, give maximum load carried at any one time.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgr. Shipping Weight in lbs.	ALL MODELS 1950 1949 1948	1947 1946 1945	1944 1943 1942	1941 to 1932	1931 and older	Mfgr. Shipping Weight in lbs.	ALL MODELS 1950 1949 1948	1947 1946 1945	1944 1943 1942	1941 to 1932	1931 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50	3001-3200	$22.50	$21.25	$16.25	$10.00	$ 8.75
2000-2200	16.80	15.00	12.50	10.00	7.50	3201-3400	30.00	28.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	3401-3600	45.10	33.25	22.75	11.25	11.25
2401-2600	20.00	16.00	12.50	10.00	7.50	3601-3800	51.00	38.75	26.00	12.00	12.00
2601-2800	21.60	16.20	12.50	10.00	7.50	3801-4000	58.50	43.00	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4001-4200	65.50	49.25	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4201-4400	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	4401-4600	75.00	56.25	37.50	18.75	18.75
3401-3600	28.00	21.00	14.00	10.00	7.50	Over 4600					

ARREARS Tax 91
Fees _____
1950 Tax 1980
1950 Fees _____
Total _____

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X Northwestern States Portland Cement Co (Northwestern States Portland Cement Co)
(Owner sign here) (Print or type name here)

14. I RESIDE IN THE COUNTY OF Kenn

15. I GET MY MAIL AT 1010 - Roanoke Bldg Mpls (2) Minn
Postoffice Address (Street or R.F.D.) City P. O. Zone State

CERTIFICATE will be sent to this address; be sure it is right.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this _____ day of _____ 19____

Notary Public _____ County, Minn. My commission expires _____

If plates are not to be sent to owner as above give name and address here _____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

Please do not send personal check

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

B 31577

Here Attach Draft, Cashier's Check or Money Order.

For a class not listed hereon use other form where it is listed; form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

REC'D OCT 6 1950

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA
County of _____ } ss. Date Oct 6, 1950

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1950 Minnesota Registration No.
3 [illegible]

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS** X
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. **"HOUSE TRAILER":** CLASS "HZ" ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50	3001-3500	$33.50	$24.98	$16.25	$16.00	$ 8.25
2000-2200	16.00	15.00	12.50	10.00	7.50	3501-4000	39.00	29.25	19.50	16.00	9.75
2201-2400	15.45	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.00	38.70	25.80	12.90	12.90
2601-2800	21.00	15.75	12.50	10.00	7.50	4401-4600	56.50	42.38	28.25	14.63	14.63
2801-3000	22.50	17.45	12.50	10.00	7.50	4601-4800	62.00	46.25	32.00	16.45	16.45
3001-3200	24.00	18.00	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75
3401-3600	28.50	21.00	14.00	10.00	7.50						

3. **"PASSENGER CAR UTILITY TRAILER":** CLASS "UZ" ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1951).
4. **"MOTORCYCLE":** CLASS "MC" ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. **"MOTORIZED BICYCLE" OR "MOTOR SCOOTER":** CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.
6. **"SNOWMOBILE":** CLASS "S" ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

7. MAKE Ford
8. SERIAL No. P46A6428
9. YEAR & MODEL 46 —
10. TYPE 4d
11. Check kind of transmission: Standard ☐ Other ☐
12. No. of Cyl. ____ Pass. Cap. ____

Weight 3335 lbs.

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "UZ" trailer give gross weight of load and vehicle.

ARREARS Tax ____ Fees ____
1951 Tax 1.00
1951 Fees 1.00
Total 2.00

Attach Registration Certificate Here. If not attached, explain why.

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X Northwestern States Portland Cement Co. (Northwestern States Portland Cement Co.)
    Owner must sign here. 3018 Nicollet Blg. 3018 Nicollet (Bldg.)
14. I RESIDE IN THE CITY OF Minneapolis, Minnesota Minneapolis, Minnesota
15. I GET MY MAIL AT _____
    Postoffice Address (Street or R.F.D.) City P.O. Zone State
    CERTIFICATE will be sent to this address; be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this _____ day of _____, 195__

Notary Public _____ County, Minn. My commission expires _____

If plates are not to be sent to owner as above give name and address here _____

B 31577

Postoffice Address (Street or R.F.D.) City P.O. Zone State

Please do not write in this space

SEE INSTRUCTIONS ON REVERSE SIDE HEREOF

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 379]

30468

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Here Attach Draft, Cashier's Check or Money Order.

REC'D OCT 5 1951

1

Do Not Write in This Space

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA,
County of Henn } ss. Date Oct 5, 1951

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Attach Registration Certificate Here. If not attached, explain why.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS** ✓
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. **"HOUSE TRAILER": CLASS "HZ"** ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00
801-2000	15.20	15.00	12.50	10.00	7.50
2001-2200	16.80	15.00	12.50	10.00	7.50
2201-2400	18.40	15.00	12.50	10.00	7.50
2401-2600	20.00	15.00	12.50	10.00	7.50
2601-2800	21.60	16.20	12.50	10.00	7.50
2801-3000	23.20	17.40	12.50	10.00	7.50
3001-3200	24.80	18.60	12.50	10.00	7.50
3201-3400	26.40	19.80	13.20	10.00	7.50

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
3401-3600	$28.00	$21.00	$14.00	$10.00	$ 7.50
3601-3800	33.30	24.98	16.65	10.00	8.33
3801-4000	39.00	29.25	19.50	10.00	9.75
4001-4200	45.10	33.83	22.55	11.28	11.28
4201-4400	51.60	38.70	25.80	12.90	12.90
4401-4600	58.50	43.88	29.25	14.63	14.63
4601-4800	65.80	49.35	32.90	16.45	16.45
4801-5000	73.50	55.13	36.75	18.38	18.38
Over 5000	75.00	56.25	37.50	18.75	18.75

3. **"PASSENGER CAR UTILITY TRAILER": CLASS "$Z"** ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1953).
4. **"MOTORCYCLE": CLASS "MC"** ____
   Does it have a side car or three wheels? ____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. **"MOTOR SCOOTER," "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR": CLASS "MBS"** ____
   Encircle the one you are registering. Tax: $1.
6. **"SNOWMOBILE": CLASS "S"** ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

Give 1951 Minnesota Registration No. 31-577

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

7. **MAKE** Pont
8. **SERIAL NO.** 8eZH 6428
9. **YEAR & MODEL** 1946 - 4 Dr.
10. **TYPE** ____
11. **Check kind of transmission:** Standard ☐ Other ☐
12. **No. of Cyl.** ____ **Pass. Cap.** ____

Weight 3335 **lbs.**

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "$Z" trailer give gross weight of load and vehicle.

ARREARS Tax ____ Fees ____
1952 Tax 3 20
1952 Fees ____
Total ____

Please do not send personal check

SEE INSTRUCTIONS ON REVERSE SIDE HEREOF

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for payment of additional amount of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. **OWNER** X ____ Northwestern States Portland Cement Co
    Owner must sign here (Print or type name here)
14. **I RESIDE IN THE COUNTY OF** Ram.
15. **I GET MY MAIL AT** ____ Roanoke Bldg
    Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this ____ **day of** ____, 195__

Notary Public ____ County, Minn. My commission expires ____

If plates are not to be sent to owner as above give name and address here ____ 30468

Postoffice Address (Street or R F D) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

Please do not send personal check

DO NOT SEND CURRENCY. If you do, it will be at your own risk. Remit by certified check, American Express or U. S. Postal money order, or bank draft. To avoid delay, do not send personal checks. Applications with which personal checks are submitted will be held up for 13 days after deposit, for it sometimes takes that long to get reports on checks that do not clear. Send SEPARATE CHECKS for EACH APPLICATION to avoid return of application. Especially when more than one application is forwarded in the same envelope, it is well to put the old registration number or applicant's name on check or draft so as to be sure that it will be connected with the right application.

Do Not Write in This Space. For Office Use Only

90633

Lake St. Pontiac Dre 720 E Lake St. Mpls

~~11:771:~~ 2-2-52 B

11/81 Rw

Triple O Testers 432-3rd Ave. So. Mpls.

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? _____ (Date) Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? _____ (Date) 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? _____ (Date)

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased _____

_____ 23. Date purchased _____, 195__
City State

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA }
County of _____ } ss.

_____ being duly sworn says: That he is authorized to sign as agent for _____, licensed as dealer for _____ (Year) under No. _____;

that said licensed dealer on _____ (Date), sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from _____ (Whom) _____ (Address)

_____ (When) by _____ (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used.);

that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is clearly noted in this application for registration.

Signature _____

Subscribed and sworn to before me this _____ day of _____, 195__

SEAL

_____

Notary Public _____ County, Minn. My commission expires _____

[fol. 381]

PLAINTIFF'S EXHIBIT W

Official Seal of Minnesota

36828

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated October 14, 1948 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering a 1946 Pontiac, Model P6LA, 2door with motor and serial number P6LA6745, 1949 registration number 86066.

Application for Registration dated October 6, 1949 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering same vehicle, 1950 registration number 30697.

Application for Registration dated October 6, 1950 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering same vehicle, 1951 registration number 31578.

Posting of Transfers on reverse side of application covering same vehicle to Lake Street Pontiac, Inc., 720 E. Lake St., Minneapolis, Minnesota under date of May 25, 1951, Transfer No. 222902; and to Walter R. Siewert, 3924 Xenwood Avenue, St. Louis Park, Minnesota under date of May 29, 1951, Transfer No. 237666.

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this

29th *day of* October,

*A. D. 19*54.

W

Secretary of State

3c.1

362

[fol. 382]

FORM 1H

APPLICATION FOR MOTOR VEHICLE REGISTRATION
USE THIS SIDE ONLY TO RE-REGISTER A VEHICLE REGISTERED IN MINNESOTA LAST YEAR

For new vehicle or one registered elsewhere use other side.

AUTOMOBILE—HEARSE—SCHOOL BUS (Cross out two)

To MIKE HOLM, Secretary of State

St. Paul, Minnesota

Date Oct 14 1948 194 8

Do not write in this space. 41

REC'D OCT 14

B 86066

Have Attached Cashier's Check or Money Order.

Do not Write in This Space. For Office Use Only.

Give 1948 Minnesota Registration No.

No. 31752

Make Pnt

Motor P62A 6745

Serial P62A 6745

Year & Model 1946 - P62A

Type 2 dr.

SHIPPING WEIGHT
(As shown on registration card)
3300 lbs.

If shipping weight is not available attach official weight ticket.

No. of Cylinders ___ Capacity ___ passengers.

IF VEHICLE IS A BUS is it operated ONLY as a School Bus ___?

(If not, this blank will not serve. Use Bus Form 5A)

Manufacturer's Shipping Weight	TAX IN ALL MAKES							
	All 1949 Models	All 1948 Models	All 1947 Models	All 1946 Models	All 1945 Models	All 1944 Models	All 1943 Models	All Older Models
Under 2,000 lbs.	$11.00	$ 9.90	$ 8.25	$ 6.60	$ 5.00	$ 5.00	$ 5.00	$ 5.00
2,000-2,200 lbs., Inc.	17.00	15.30	12.75	10.20	7.65	7.50	7.50	7.50
2,201-2,400 " "	18.00	16.20	13.50	10.80	8.10	7.50	7.50	7.50
2,401-2,600 " "	19.00	17.10	14.25	11.40	8.55	7.50	7.50	7.50
2,601-2,800 " "	20.00	18.00	15.00	12.00	9.00	7.50	7.50	7.50
2,801-3,000 " "	21.00	18.90	15.75	12.60	9.45	7.50	7.50	7.50
3,001-3,200 " "	23.25	20.92	16.80	13.95	10.01	7.50	7.50	7.50
3,201-3,400 " "	25.50	22.95	19.13	15.30	11.48	7.65	7.50	7.50
3,401-3,600 " "	27.25	24.53	20.44	16.35	12.26	8.18	7.50	7.50
3,601-3,800 " "	30.75	27.68	23.06	18.45	13.84	9.23	7.50	7.50
3,801-4,000 " "	34.75	31.28	26.06	20.85	15.64	10.43	7.50	7.50
4,001-4,200 " "	45.00	40.50	33.75	27.00	20.25	13.50	7.50	7.50
4,201-4,400 " "	54.00	48.60	40.50	32.40	24.30	16.20	8.10	7.50
4,401-4,600 " "	57.00	51.30	42.75	34.20	25.65	17.10	8.55	7.50
4,601-4,800 " "	65.00	58.50	48.75	39.00	29.25	19.50	9.75	7.50
4,801 and over	75.00	67.50	56.25	45.00	33.75	22.50	11.25	7.50

ARREARS { Tax ___ Fees 30

1949 Tax 15

1949 Fees ___

Total ___

Attach Registration Certificate Here.

If not attached, explain why.

Please do not send personal check

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

I, the undersigned, hereby apply for registration and affirm that I am the owner of the above described vehicle, and also that I have described it correctly.

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

OWNER By R. Jamieson
Owner sign here

(Print Christian Name Here) (Mason City, Iowa)

RESIDE IN THE COUNTY OF Johnson

GET MY MAIL AT 1910 - 11 Roanoke Bldg Mpls (2) Minn
Postoffice Address (Street or R F D) City P. O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

If plates are not to be sent to owner as above give name and address here ___

R Bridges

Postoffice Address (Street or R F D) City P. O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 383]

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

IMPORTANT: Before filling out application, read other side.

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 21 and 22 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-19 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 20 on reverse side in addition.

30697

REC'D OCT 6 1949

1

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA }
County of Ram } ss. Date Oct 6, 19 49

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Here Attach Dr vehicle's Check or Mo ber.

Attach Registration Certificate Here If not attached, explain why.

Give 1949 Minnesota Registration No.
No. 86066

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

Have you read the law on the reverse side hereof in regard to that class? _____

1. "PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS ____
   Encircle the one you are registering.
   Tax: Find it by weight, table below.
2. "HOUSE TRAILER": CLASS "HZ" ____
   Tax: Find it by weight, see table below.
3. "PASSENGER CAR UTILITY TRAILER": CLASS "$Z" ____
   Tax: $2 per biennium, $1 for last year thereof.
   (This is new. See law on other side.)
4. "SNOWMOBILE": CLASS "S" ____
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.
5. "MOTORCYCLE": CLASS "MC" ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.
6. "MOTORIZED BICYCLE" OR "MOTOR SCOOTER": CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.

7. MAKE Ford
8. SERIAL NO. P6LA-6745
9. MOTOR NO. P6LA 6745
10. YEAR & MODEL 1946 P6LA
11. TYPE 2 Dr
12. No. of Cyl. _____ Pass. Cap. _____

Weight 3300 lbs.
If passenger automobile, ambulance, hearse, house trailer or snowmobile, give manufacturers shipping weight. (If shipping weight is not available, attach official weight ticket.) For a trailer other than a house trailer, give maximum load carried at any one time.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgr. Shipping Weight in lbs.	ALL MODELS 1950 1949 1948	1947 1946 1945	1944 1943 1942	1941 to 1932	1931 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50
2000-2200	16.00	15.00	12.50	10.00	7.50
2201-2400	16.40	15.00	12.50	10.00	7.50
2401-2600	20.00	15.00	12.50	10.00	7.50
2601-2800	21.00	16.20	12.50	10.00	7.50
2801-3000	23.20	17.40	12.50	10.00	7.50
3001-3200	24.80	18.60	12.50	10.00	7.50
3201-3400	26.40	19.80	13.20	10.00	7.50
3401-3600	28.00	21.00	14.00	10.00	7.50

Mfgr. Shipping Weight in lbs.	ALL MODELS 1950 1949 1948	1947 1946 1945	1944 1943 1942	1941 to 1932	1931 and older
3601-3800	29.60	22.20	14.80	10.00	7.50
3801-4000	30.00	23.25	19.50	16.00	9.75
4001-4200	45.10	33.83	22.55	11.30	11.30
4201-4400	51.00	38.70	25.80	12.90	12.90
4401-4600	56.50	42.38	28.25	14.60	14.60
4601-4800	66.50	49.85	33.90	16.45	16.45
4801-5000	72.50	54.13	36.75	18.38	18.38
Over 5000	78.00	54.25	37.50	18.75	18.75

ARREARS Tax 71
Fees
1950 Tax 1980
1950 Fees
Total

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

12. OWNER X Northwestern States Portland Cement Co. (Northwestern States Portland Cement Co.)
(Sign here) (Print or type name here)

14. I RESIDE IN THE COUNTY OF Ramsey

15. I GET MY MAIL AT 1010 - Roanoke Bldg Mpls (2) Minn.
Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address: be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this _____ day of _____ 19____

Notary Public _____, County, Minn. My commission expires _____

If plates are not to be sent to owner as above give name and address here _____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

Please do send personal check

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

B 31578 8

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Here Attach Draft, Cashier's Check or Money Order.

Do Not Write in This Space.

REC'D OCT 6 1950

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA
County of _____ } ss. Date Oct 6, 1950

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1950 Minnesota Registration No. 30697

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. "PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS X
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. "HOUSE TRAILER": CLASS "HZ" ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

Attach Registration Certificate Here. If not attached, explain why.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50	3601-3800	$33.30	$24.98	$16.65	$16.00	$ 8.33
2000-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.60	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	13.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	13.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	13.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75
3401-3600	28.00	21.00	14.00	10.00	7.50						

7. MAKE Pont
8. SERIAL NO. P6 7A 6745
9. YEAR & MODEL 46 - P6LA
10. TYPE 2d.
11. Check kind of transmission: Standard ☐ Other ☐
12. No. of Cyl. _____ Pass. Cap. _____

Weight 3300 lbs.

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "SZ" trailer give gross weight of load and vehicle.

3. "PASSENGER CAR UTILITY TRAILER": CLASS "SZ" ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1951).
4. "MOTORCYCLE": CLASS "MC" ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. "MOTORIZED BICYCLE" OR "MOTOR SCOOTER": CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.
6. "SNOWMOBILE": CLASS "S" ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

ARREARS { Tax _____ Fees 1980
1951 Tax _____
1951 Fees _____

TRANSFERRED

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X 1010 Roanok[illegible] Northwestern States Port[illegible]
    Owner must sign here
    Minneapolis, Minn[illegible] Northwestern States Port[illegible]
    1010 Roanoke Blvd (Number and Street or R.F.D.)
    Minneapolis, Minne[illegible]
14. I RESIDE IN THE COUNTY OF Hennepin
15. I GET MY MAIL AT _____
    Postoffice Address (Street or R.F.D.) City P.O. Zone State
    CERTIFICATE will be sent to this address, be sure it is clear.

Please do not ✓ personal check

SEE INSTRUCTIONS ON REVERSE SIDE HEREOF

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this _____ day of _____, 195__

Notary Public _____ County, Minn. My commission expires _____

If plates are not to be sent to owner as above give name and address here _____

B 31578

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15, LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 385]

222902 **Please do not send personal check**

Lake Street Pontiac 31578
Inc., 720 E. Lake St 5-25-51
Mpls.

mit by certified check, American Express or U. S. Postal money order, or bank which personal checks are submitted will be held up for 12 days after deposit. clear. Send SEPARATE CHECKS for EACH APPLICATION to avoid return in the correspondence, it is well to add the old registration number or applicant's address. Board issued

237666

Walter R.Siewert, 31578
3924 Xenwood Ave 5-29-51
St.Louis Park.Mpls. M 73546

Space Reserved for Office Use Only. Do Not Write in This

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? _____ (Date) Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? _____ (Date) 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____ (Date)

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? _____ (Date)

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased _____

_____ 23. Date purchased _____, 195__
City State

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA }
County of _____ } ss.

_____ being duly sworn says: That he is authorized to sign as agent for _____, licensed as dealer for _____ (Year) under No. _____;

that said licensed dealer on _____ (Date), sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from _____
(Whom) (Address)

_____ by _____;
(When) (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used.)

that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is clearly noted in this application for registration.

Signature _____

Subscribed and sworn to before me this _____ day of _____, 195__

SEAL

_____

Notary Public _____ County, Minn. My commission expires _____

[fol. 386]

PLAINTIFF'S EXHIBIT X

United States of America.

36826

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated October 14, 1948 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering a 1941 Oldsmobile, Model S76, Club Sedan with motor number G3677765, serial number 76-52519, 1949 registration number 86065.

Application for Registration dated October 6, 1949 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering same vehicle, 1950 registration number 30695.

Application for Registration dated October 6, 1950 in the name of Northwestern States Portland Cement Company, 1010 Roanoke Building, Minneapolis, Minnesota, covering same vehicle, 1951 registration number 31576.

Motor Vehicle Department Form 73 bearing number 37930P, showing transfer of registration number 31576 to George W. Watson, 3924 Fifteenth Avenue South, Minneapolis, Minnesota under date of June 8, 1951, with payment of additional fee in the amount of 50 cents.

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this

29th *day of* October,

A. D. 19 54.

Secretary of State

386

[fol. 387]

FORM 1H

APPLICATION FOR MOTOR VEHICLE REGISTRATION
USE THIS SIDE ONLY TO RE-REGISTER A VEHICLE REGISTERED IN MINNESOTA LAST YEAR

For new vehicle or one registered elsewhere use other side.

AUTOMOBILE—HEARSE—SCHOOL BUS (Cross out two)

To MIKE HOLM, Secretary of State

St. Paul, Minnesota

Date Oct 14 1948

REC'D OCT 14 1948

Do not write in this space.

B 86065

Cashier's Check or Money Order

Here Attach

Attach Registration Certificate Here.

If not attached, explain why.

Do not Write in This Space. For Office Use Only.

Give 1948 Minnesota Registration No.

No. 31753

Make Olds

Motor 9367765

Serial 76-52579

Year & Model 1941-576

Type 4 Dr Sed

SHIPPING WEIGHT
(As shown on registration card)

_____ lbs.

If shipping weight is not available attach official weight ticket.

Manufacturer's Shipping Weight	TAX IN ALL MAKES							
	All 1949 Models	All 1948 Models	All 1947 Models	All 1946 Models	All 1945 Models	All 1944 Models	All 1943 Models	All Older Models
Under 2,000 lbs.	$11.00	$ 9.90	$ 8.25	$ 6.60	$ 5.00	$ 5.00	$ 5.00	$ 5.00
2,000-2,200 lbs., Inc.	17.00	15.30	12.75	10.20	7.65	7.50	7.50	7.50
2,201-2,400 " "	18.00	16.20	13.50	10.80	8.10	7.50	7.50	7.50
2,401-2,600 " "	19.00	17.10	14.25	11.40	8.55	7.50	7.50	7.50
2,601-2,800 " "	20.00	18.00	15.00	12.00	9.00	7.50	7.50	7.50
2,801-3,000 " "	21.00	18.90	15.75	12.60	9.45	7.50	7.50	7.50
3,001-3,200 " "	22.25	20.03	16.69	13.35	10.01	7.50	7.50	7.50
3,201-3,400 " "	25.50	22.95	19.13	15.30	11.48	7.65	7.50	7.50
3,401-3,600 " "	27.25	24.53	20.44	16.35	12.26	8.18	7.50	7.50
3,601-3,800 " "	30.75	27.68	23.06	18.45	13.84	9.23	7.50	7.50
3,801-4,000 " "	34.75	31.28	26.06	20.85	15.64	10.43	7.50	7.50
4,001-4,200 " "	45.00	40.50	33.75	27.00	20.25	13.50	7.50	7.50
4,201-4,400 " "	54.00	48.60	40.50	32.40	24.30	16.20	8.10	7.50
4,401-4,600 " "	57.00	51.30	42.75	34.20	25.65	17.10	8.55	7.50
4,601-4,800 " "	65.00	58.50	48.75	39.00	29.25	19.50	9.75	7.50
4,801 and over	75.00	67.50	56.25	45.00	33.75	22.50	11.25	7.50

If VEHICLE IS A BUS is it operated ONLY as a School Bus _____?

(If not, this blank will not serve. Use Bus Form 5A)

No. of Cylinders ___ Capacity ___ passengers.

ARREARS { Tax _____ Fees _____

1949 Tax 1.50

1949 Fees _____

Total _____

I, the undersigned, hereby apply for registration and affirm that I am the owner of the above described vehicle, and also that I have described it correctly.

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

Signed By [illegible] (Owner must sign here) (Print or type name here) Sioux City, Iowa

I RESIDE IN THE COUNTY OF Tenhessis

I GET MY MAIL AT 1510 Roanoke Bldg, Sioux City (2) Iowa

(Postoffice Address (Street or R.F.D.) (City) (P. O. Zone) (State)

CERTIFICATE will be sent to this address; be sure it is clear.

If plates are not to be sent to owner as above give name and address here _____

(Street or R.F.D.) (City) (P. O. Zone) (State)

Please do not send personal check

SEE INSTRUCTIONS ON REVERSE SIDE OF BLANK

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

IMPORTANT: Before filling out application, read other side.

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 21 and 22 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-19 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 20 on reverse side in addition.

REC'D OCT 6 1949

30695

Do Not Write in This Space. For Office Use Only

Here Attach Draft, Cashier's Check or Money Order.

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA } ss.
County of [illegible] Date Oct 6, 19 49

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1949 Minnesota Registration No.
No. 86065

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

Have you read the law on the reverse side hereof in regard to that class? _____

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE":** CLASS ____
   Encircle the one you are registering.
   Tax: Find it by weight, table below.
2. **"HOUSE TRAILER":** CLASS "HZ" ____
   Tax: Find it by weight, see table below.
3. **"PASSENGER CAR UTILITY TRAILER":** CLASS "$Z" ____
   Tax: $2 per biennium, $1 for last year thereof.
   (This is new. See law on other side.)
4. **"SNOWMOBILE":** CLASS "S" ____
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.
5. **"MOTORCYCLE":** CLASS "MC" ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.
6. **"MOTORIZED BICYCLE" OR "MOTOR SCOOTER":** CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.

7. MAKE Olds
8. SERIAL NO. 16-52519
9. MOTOR NO. 136776
10. YEAR & MODEL 941-476
11. TYPE Club Sed
12. No. of Cyl. _____ Pass. Cap. _____

Weight 3300 **lbs.**
If passenger automobile, ambulance, hearse, house trailer or snowmobile, give manufacturers shipping weight. (If shipping weight is not available, attach official weight ticket.) For a trailer other than a house trailer, give maximum load carried at any one time.

Attach Registration Certificate Here If not attached, explain why.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1950 1949 1948	1947 1946 1945	1944 1943 1942	1941 to 1932	1931 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50
2000-2200	16.80	15.00	12.50	10.00	7.50
2201-2400	18.40	15.00	12.50	10.00	7.50
2401-2600	20.00	15.00	12.50	10.00	7.50
2601-2800	21.60	16.20	12.50	10.00	7.50
2801-3000	23.20	17.40	12.50	10.00	7.50
3001-3200	24.80	18.60	12.50	10.00	7.50
3201-3400	26.40	19.80	13.20	10.00	7.50
3401-3600	28.00	21.00	14.00	10.00	7.50

Mfgs. Shipping Weight in lbs.	ALL MODELS 1950 1949 1948	1947 1946 1945	1944 1943 1942	1941 to 1932	1931 and older
3601-3800	$33.50	$24.98	$16.65	$10.00	$ 8.33
3801-4000	30.60	29.25	19.50	10.00	9.75
4001-4200	45.10	33.83	22.55	11.28	11.28
4201-4400	51.00	38.70	25.80	12.90	12.90
4401-4600	58.50	43.88	29.25	14.63	14.63
4601-4800	65.80	49.35	32.90	16.45	16.45
4801-5000	73.50	55.13	36.75	18.38	18.38
Over 5000	75.00	56.25	37.50	18.75	18.75

ARREARS Tax _____ Fees _____

1950 Tax 10 00

1950 Fees _____

Total _____

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X Northwestern States Portland Cement Co (Northwestern States Portland Cement Co)
(Owner must also sign here) (Print or type name here)

14. I RESIDE IN THE COUNTY OF [illegible]

15. I GET MY MAIL AT 1010 Roanoke Bldg Minneapolis Minn
Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address: be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this _____ day of _____ 19__

Notary Public _____, County, Minn. My commission expires _____

Please do send personal check
(SEE INS). ...IONS ON REVERSE SIDE HEREOF)

If plates are not to be sent to owner as above give name and address here _____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 389]

B 31576

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

Here Attach Draft, Cashier's Check or Money Order.

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

REC'D OCT 6 1950

Please Write in This Space

STATE OF MINNESOTA
County of _____ } ss. **Date** Oct 6, 1950

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1950 Minnesota Registration No. 30695

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS** X
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. **"HOUSE TRAILER":** CLASS "HZ" ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50	3601-3800	$33.30	$24.98	$16.65	$10.00	$ 6.33
2000-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.26	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.60	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	13.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.62	14.62
2801-3000	23.20	17.40	13.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	13.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75
3401-3600	28.00	21.00	14.00	10.00	7.50						

Make Olds

Serial No. 76-52517

Year & Model 41-816

Type Cl Sed.

Check kind of transmission: Standard ☐ Other ☐

No. of Cyl. ____ **Pass. Cap.** ____

Weight 3300 **lbs.**

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "HZ" trailer give gross weight of load and vehicle.

3. **"PASSENGER CAR UTILITY TRAILER":** CLASS "SZ" ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1951).
4. **"MOTORCYCLE":** CLASS "M" ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. **"MOTORIZED BICYCLE" OR "MOTOR SCOOTER":** CLASS "MB" ____
   Encircle the one you are registering. Tax: $1.
6. **"SNOWMOBILE":** CLASS "S" ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

TRANSFERRED

ARREARS Tax ____ Fees ____

1951 Tax ____

1951 Fees ____

Total ____

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. **OWNER** X Northwestern States Po[illegible] (Owner must sign here) (Print or type name here)

14. **I RESIDE IN THE CITY OF** Minneapolis, [illegible]

15. **I GET MY MAIL AT** _____
    Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address, be sure it is clear.

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

SEAL

Subscribed and sworn to before me this ____ **day of** _____, 195__

Notary Public _____ **County, Minn. My commission expires** _____

If plates are not to be sent to owner as above give name and address here _____

B 31576

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1

Attach Registration Certificate Here. If not attached, explain why.

Please do not use personal check

244450

Please do not send personal check

DO NOT SEND CURRENCY. If you do, it will be at your own risk. Remit by certified check, American Expr
draft. To avoid delay, do not send personal checks. Applications with which personal checks are submitted w
for it sometimes takes that long to get reports on checks that do not clear. Send SEPARATE CHECKS for
of application. Especially when more than one application is forwarded in the same envelope, it is well to put
name on check or draft so as to be sure that it will be connected with the right application.

Do Not Write in This Space. For Office Use Only

5/23/51 Pw. P 37930

[redacted]

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? _____ (Date) Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? _____ (Date) 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? _____ (Date)

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased _____

_____ City _____ State 23. Date purchased _____, 195__

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA
County of _____ } ss.

_____ being duly sworn says: That he is authorized to sign as agent for _____, licensed as dealer for _____ (Year) under No. _____;

that said licensed dealer on _____ (Date) sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from _____ (Whom) _____ (Address)

_____ (When) by _____ (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used);

that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is clearly noted in this application for registration.

Signature _____

Subscribed and sworn to before me this _____ day of _____, 195__

_____

Notary Public _____ County, Minn. My commission expires _____

SEAL.

Form 78

STATE OF MINNESOTA
MOTOR VEHICLE DEPARTMENT

244450

No 37930 P

money order, or bank
2 days after deposit.
ION to avoid return
umber or applicant's

Transfer with Added Fee

Received $.50 ¢ in payment of penalty for delayed
transfer of registration No. 31576—
New Owner George W. Stratton
Address 3924-[illegible]
Date Filed 6/8/51— Mike Holm
Deputy R

[fol. 391]

PLAINTIFF'S EXHIBIT Y

United States of America

36828

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated November 5, 1948 in the name of Northwestern States Portland Cement Company, Mason City, Iowa, covering a 1946 Dodge, Model D24, Custom 4door with motor number D24-48433, serial number 30691655, 1949 registration number 237696.

Application for Registration dated October 14, 1949 in the name of Northwestern States Portland Cement Company, Mason City, Iowa, covering same vehicle, 1950 registration number 235840.

Application for Registration dated October 20, 1950 in the name of Northwestern States Portland Cement Company, Mason City, Iowa, covering same vehicle, 1951 registration number 236370.

Application for Registration dated October 19, 1951 in the name of Northwestern States Portland Cement Company, Mason City, Iowa, covering same vehicle, 1952 registration number 236230. Reverse side of application showing posting of transfer to Harry John Bissett, 904 E. 5th Street, Willmar, Minnesota, under date of March 5, 1952, Transfer No. B 44954.

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this 29th *day of* October, *A. D. 19* 54.

Mrs. Mike Holm

Secretary of State

391

[fol. 392]

FORM 1H

APPLICATION FOR MOTOR VEHICLE REGISTRATION
USE THIS SIDE ONLY TO RE-REGISTER A VEHICLE REGISTERED IN MINNESOTA LAST YEAR

For new vehicle or one registered elsewhere use other side.

AUTOMOBILE—HEARSE—SCHOOL BUS (Cross out two)

To MIKE HOLM, Secretary of State

St. Paul, Minnesota

Date Nov 5 1948

237696

Rec'd. 23

Nov 5

Here Attach Cashier's Check or Money Order.

Do not Write In This Space. For Office Use Only.

Give 1948 Minnesota Registration No.

No. 238427

Make Dodge

Motor D24 484433

Serial 3069165-5-

Year & Model 1946 D24

Type Cus 4d

SHIPPING WEIGHT
(As shown on registration card)

3254 lbs.

If shipping weight is not available attach official weight ticket.

No. of Cylinders ___ Capacity ___ passengers.

IF VEHICLE IS A BUS is it operated ONLY as a School Bus ___?

(If not, this blank will not serve. Use Bus Form 5A)

Manufacturer's Shipping Weight	TAX IN ALL MAKES							
	All 1949 Models	All 1948 Models	All 1947 Models	All 1946 Models	All 1945 Models	All 1944 Models	All 1943 Models	All Older Models
Under 2,000 lbs.	$11.00	$ 9.00	$ 8.25	$ 6.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00
2,000-2,200 lbs., Inc.	17.00	15.30	12.75	10.20	7.65	7.50	7.50	7.50
2,201-2,400 " "	18.00	16.20	13.50	10.80	8.10	7.50	7.50	7.50
2,401-2,600 " "	19.00	17.10	14.25	11.40	8.55	7.50	7.50	7.50
2,601-2,800 " "	20.00	18.00	15.00	12.00	9.00	7.50	7.50	7.50
2,801-3,000 " "	21.00	18.90	15.75	12.60	9.45	7.50	7.50	7.50
3,001-3,200 " "	22.25	20.02	16.69	13.35	10.01	7.50	7.50	7.50
3,201-3,400 " "	25.50	22.95	19.13	15.30	11.48	7.65	7.50	7.50
3,401-3,600 " "	27.25	24.53	20.44	16.35	12.26	8.18	7.50	7.50
3,601-3,800 " "	30.75	27.68	23.06	18.45	13.84	9.23	7.50	7.50
3,801-4,000 " "	34.75	31.28	26.06	20.85	15.64	10.43	7.50	7.50
4,001-4,200 " "	45.00	40.50	33.75	27.00	20.25	13.50	7.50	7.50
4,201-4,400 " "	54.00	48.60	40.50	32.40	24.30	16.20	8.10	7.50
4,401-4,600 " "	57.00	51.30	42.75	34.20	25.65	17.10	8.55	7.50
4,601-4,800 " "	65.00	58.50	48.75	39.00	29.25	19.50	9.75	7.50
4,801 and over	75.00	67.50	56.25	45.00	33.75	22.50	11.25	7.50

ARREARS { Tax ___ Fees ___

1949 Tax 15.30

1949 Fees ___

Total 15.30

If not attached, explain why.

Attach Registration Certificate Here.

I, the undersigned, hereby apply for registration and affirm that I am the owner of the above described vehicle, and also that I have described it correctly.

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

OWNER W. H. Stutes Portland Cement Co. Northwestern State Portland Cement Co
(Owner must sign here) (Print or type name here)

I RESIDE IN THE COUNTY OF ___

I GET MY MAIL AT Mason City Iowa
(Postoffice Address (Street or R.F.D.) City P. O. Zone State)

CERTIFICATE will be sent to this address; be sure it is clear.

If plates are not to be sent to owner as above give name and address here ___
(Postoffice Address (Street or R.F.D.) City P. O. Zone State)

Please do not send personal check

SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

312 NOVEMBER IS LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 393]

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

IMPORTANT: Before filling out application, read other side.

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 21 and 22 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-19 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 20 on reverse side in addition.

Here Attach Dealer's Check or Money Order

Attach Registration Certificate Here If not attached, explain why.

Please do not send personal check

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

Do Not Write In This Space. For Office Use Only.

235846

Rec'd. 23

Oct 4 41

Give 1949 Minnesota Registration No.

No. 2376 T6

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA

County of Itasca } ss. Date Oct 1, 19 41

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

Have you read the law on the reverse side hereof in regard to that class? _____

1. "PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS E
   Encircle the one you are registering.
   Tax: Find it by weight, table below.
2. "HOUSE TRAILER": CLASS "HZ" ____
   Tax: Find it by weight, see table below.
3. "PASSENGER CAR UTILITY TRAILER": CLASS "$Z" ____
   Tax: $2 per biennium, $1 for last year thereof.
   (This is new. See law on other side.)
4. "SNOWMOBILE": CLASS "S" ____
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.
5. "MOTORCYCLE": CLASS "MC" ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.
6. "MOTORIZED BICYCLE" OR "MOTOR SCOOTER": CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.

7. MAKE Ford
8. SERIAL NO. 2 06 776 5
9. MOTOR NO. 24-4843
10. YEAR & MODEL 1936 d24
11. TYPE Cus 4d
12. No. of Cyl. ____ Pass. Cap. ____

Weight 3254 lbs.

If passenger automobile, ambulance, hearse, house trailer or snowmobile, give manufacturers shipping weight. (If shipping weight is not available, attach official weight ticket.) For a trailer other than a house trailer, give maximum load carried at any one time.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1950 1949 1948	1947 1946 1945	1944 1943 1942	1941 to 1932	1931 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50
2000-2200	16.80	15.00	12.50	10.00	7.50
2201-2400	18.40	15.00	12.50	10.00	7.50
2401-2600	20.00	15.00	12.50	10.00	7.50
2601-2800	21.60	16.20	12.50	10.00	7.50
2801-3000	23.20	17.40	12.50	10.00	7.50
3001-3200	24.80	18.60	12.50	10.00	7.50
3201-3400	26.40	19.80	13.20	10.00	7.50
3401-3600	28.00	21.00	14.00	10.00	7.50
3601-3800	$33.30	$24.98	$16.65	$10.00	$ 8.33
3801-4000	39.00	29.25	19.50	10.00	9.75
4001-4200	45.10	33.83	22.55	11.28	11.28
4201-4400	51.60	38.70	25.80	12.90	12.90
4401-4600	58.50	43.88	29.25	14.63	14.63
4601-4800	65.80	49.35	32.90	16.45	16.45
4801-5000	73.50	55.13	36.75	18.38	18.38
Over 5000	75.00	56.25	37.50	18.75	18.75

ARREARS Tax _____ Fees _____

1950 Tax 14.80

1950 Fees _____

Total 14.80

I understand that any plate issued to me hereunder may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER Walter Voit Grant (Owner must sign here) Walter Voit Grant (Print or type name here)

14. I RESIDE IN THE COUNTY OF Itasca

15. I GET MY MAIL AT Marcell (Postoffice Address (Street or R.F.D.)) Marcell (City) (P. O. Zone) Minn (State)

CERTIFICATE will be sent to this address; be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this ____ day of ____ 19__

Notary Public _____, County, Minn. My commission expires _____

If plates are not to be sent to owner as above give name and address here _____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

374

[fol. 394]

Form AA

Here Attach Draft, Cashier's Check or Money Order.

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

51

Do Not Write in This Space

RCD 25

sect 20-50

STATE OF MINNESOTA } ss.

County of _____ Date _____, 195__

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1950 Minnesota Registration No. L 35 840

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS** ✓
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.

2. **"HOUSE TRAILER":** **CLASS "HZ"** ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50	3601-3800	$33.30	$24.98	$16.65	$10.00	$ 8.33
2000-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.00	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.83	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75
3401-3600	28.00	21.00	14.00	10.00	7.50						

3. **"PASSENGER CAR UTILITY TRAILER":** **CLASS "SZ"** ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1951).

4. **"MOTORCYCLE":** **CLASS "MC"** ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.

5. **"MOTORIZED BICYCLE" OR "MOTOR SCOOTER":** **CLASS "MBS"** ____
   Encircle the one you are registering. Tax: $1.

6. **"SNOWMOBILE":** **CLASS "S"** ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

7. **MAKE** Dodge
8. **SERIAL NO.** 30,691,653
9. **YEAR & MODEL** 46 D24
10. **TYPE** Cus 4d.
11. **Check kind of transmission:** Standard ☒ Other ☐
12. **No. of Cyl.** 6 **Pass. Cap.** 5

Weight 3250 **lbs.**

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "SZ" trailer give gross weight of load and vehicle.

ARREARS Tax _____ Fees _____

1951 Tax _____

1951 Fees _____

Total _____

Attach Registration Certificate Here. If not attached, explain why.

Please do not send personal check

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax that may be discovered to be necessary when this application is checked at St. Paul.

13. **OWNER** X Stephen Saunders North Western Sate Corp
    Owner must sign here (Print or type name here)
14. **I RESIDE IN THE COUNTY OF** Cerro Gordo
15. **I GET MY MAIL AT** Mason City, Iowa
    Post Office Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address, be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this _____ **day of** _____, 195__

_____
Notary Public _____ **County, Minn. My commission expires**

If plates are not to be sent to owner as above give name and address here _____

_____
Post Office Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1

3/14

[fol. 395]

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Here Attach Draft, Cashier's Check or Money Order.

23623 0

RECEIPT

Do Not Write in This Space

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA } ss.
County of _____ } Date _____, 195__

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1951 Minnesota Registration No. 236 370

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS ____**
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.

2. **"HOUSE TRAILER": CLASS "HZ" ____**
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00
801-2000	15.20	15.00	12.50	10.00	7.50
2001-2200	16.80	15.00	12.50	10.00	7.50
2201-2400	18.40	15.00	12.50	10.00	7.50
2401-2600	20.00	15.00	12.50	10.00	7.50
2601-2800	21.60	16.20	12.50	10.00	7.50
2801-3000	23.20	17.40	12.50	10.00	7.50
3001-3200	24.80	18.60	12.50	10.00	7.50
3201-3400	26.40	19.80	13.20	10.00	7.50

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
3401-3600	$28.00	$21.00	$14.00	$10.00	$ 7.50
3601-3800	33.30	24.98	16.65	10.00	8.33
3801-4000	39.00	29.25	19.50	10.00	9.75
4001-4200	45.10	33.83	22.55	11.28	11.28
4201-4400	51.60	38.70	25.80	12.90	12.90
4401-4600	58.50	43.88	29.25	14.63	14.63
4601-4800	65.80	49.35	32.90	16.45	16.45
4801-5000	73.50	55.13	36.75	18.38	18.38
Over 5000	75.00	56.25	37.50	18.75	18.75

3. **"PASSENGER CAR UTILITY TRAILER": CLASS "SZ" ____**
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1953).

4. **"MOTORCYCLE": CLASS "MC" ____**
   Does it have a side car or three wheels?
   Tax: Without side car $3, with side car or 3 wheels $5.

5. **"MOTOR SCOOTER," "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR": CLASS "MBS" ____**
   Encircle the one you are registering. Tax: $1.

6. **"SNOWMOBILE": CLASS "S" ____**
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose
   Tax $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

7. MAKE Nash
8. SERIAL NO. 506916553
9. YEAR & MODEL 46 Lan
10. TYPE Duo 4d
11. Check kind of transmission: Standard ☑ Other ☐
12. No. of Cyl. ____ Pass. Cap. ____

Weight 3454 lbs.

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "SZ" trailer give gross weight of load and vehicle.

TRANSFERRED

ARREARS { Tax ____ Fees ____
1952 Tax 13.20
1952 Fees ____
Total 13.20

Attach Registration Certificate Here. If not attached, explain why.

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment fee, etc. that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X [signature] (Print or type name here)
Owner must sign here

14. I RESIDE IN THE COUNTY OF ____

15. I GET MY MAIL AT ____
(Box, Rte. Address, Street or R F D) City P O Zone State

CERTIFICATE will be sent to this address, be sure it is clear.

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant

SEAL

Subscribed and sworn to before me this ____ day of ____, 195

Notary Public ____ County, Minn. My commission expires ____

If plates are not to be sent to owner as above give name and address here ____

(Box, Rte. Address, Street or R F D) City P O Zone State

Please do not fold personal check

SEE INSTRUCTIONS ON REVERSE SIDE HEREOF

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1

Please do not send personal check

DO NOT SEND CURRENCY. If you do, it will be at your own risk. Remit by certified check, American Express or U. S. Postal money order, or bank draft. To avoid delay, do not send personal checks. Applications with which personal checks are submitted will be held up for 12 days after deposit, for it sometimes takes that long to get reports on checks that do not clear. Send SEPARATE CHECKS for EACH APPLICATION to avoid return of application. Especially when more than one application is forwarded in the same envelope, it is well to put the old registration number or applicant's name on check or draft, so as to be sure that it will be connected with the right application.

Do Not Write in This Space For Office Use Only

168447

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ (Date) 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? _____ (Date) Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? _____ 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____ (Date)

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? _____ (Date)

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased _____

_____ 23. Date purchased _____, 195__
City State

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA }
County of _____ } ss.

_____ being duly sworn says: That he is authorized to sign as agent for _____, licensed as dealer for _____ (Year) under No. _____;

that said licensed dealer on _____ (Date), sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from _____

_____ (Whom) _____ (Address)

_____ (When) by _____ (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used)

that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is clearly noted in this application for registration.

Signature _____

Subscribed and sworn to before me this _____ day of _____, 195__

SEAL

Notary Public _____ County, Minn. My commission expires _____

314

[fol. 397]

PLAINTIFF'S EXHIBIT Z

United States of America

36828

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated January 24, 1952 in the name of Northwestern States Portland Cement Company, Box 683, Willmar, Minnesota, covering a 1952 Dodge, Model D42, Meadowbrook 4door with serial number 31893420, 1952 registration number 547515.

Dealer's Report of Sale on reverse side of application covering same vehicle, executed to show sale from Johnson-Giere Motor Company, Willmar, Minnesota to Northwestern States Portland Cement Company under date of January 25, 1952.

Application for Registration dated November 14, 1952 in the name of Northwestern States Portland Cement Company, Box 683, Willmar, Minnesota, covering same vehicle, 1953 registration number 52929°.

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this 29th *day of* October,

A. D. 19 54.

Secretary of State

24 >>

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Here Attach Draft, Cashier's Check or Money Order.

547515
Rec'd.
JAN 2

Do Not Write in This Space

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA
County of Kandiyohi } ss. Date Jan 24, 1952

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1951 Minnesota Registration No.
M 1

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS** X
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. **"HOUSE TRAILER":** CLASS "HZ" ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00	3401-3600	$28.00	$21.00	$14.00	$10.00	$ 7.50
801-2000	15.20	15.00	12.50	10.00	7.50	3601-3800	33.30	24.98	16.65	10.00	8.33
2001-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.60	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75

3. **"PASSENGER CAR UTILITY TRAILER":** CLASS "$Z" ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1953).
4. **"MOTORCYCLE":** CLASS "MC" ____
   Does it have a side car or three wheels? ____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. **"MOTOR SCOOTER," "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR":** CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.
6. **"SNOWMOBILE":** CLASS "S" ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

7. **MAKE** Dodge
8. **SERIAL NO.** 31893420
9. **YEAR & MODEL** 1952 D42
10. **TYPE** Meadowbrook 4 dr.
11. **Check kind of transmission:** Standard ☒ Other ☐
12. **No. of Cyl.** 6 **Pass. Cap.** 6

3355
Weight ____ lbs.

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "$Z" trailer give gross weight of load and vehicle.

Refund 1.60

ARREARS Tax ____
Fees ____

1952 Tax 2.00

1952 Fees ____

Total ____

I understand that any plate issued to me hereunder may be seized at any time if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be unpaid at the time this application is checked at St. Paul.

13. **OWNER** X ____ (Cement Co. by R. H. Sigg)
Owner must sign here (Print or type name here)

14. **I RESIDE IN THE COUNTY OF** Kandiyohi

15. **I GET MY MAIL AT** Rt 683 Willmar Minn
Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this 24 day of Jan, 1952

R. J. Winkler

Notary Public ____ County, Minn. My commission expires ____

NOTARY PUBLIC, KANDIYOHI COUNTY, MINN.
My Commission Expires

If plates are not to be sent to owner as above give name and address here ____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

Please do not send personal check (SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

Attach Registration Certificate Here. If not attached, explain why.

[fol. 399]

Please do not send personal check

DO NOT SEND CURRENCY. If you do, it will be at your own risk. Remit by certified check, American Express or U. S. Postal money order, or bank draft. To avoid delay, do not send personal checks. Applications with which personal checks are submitted will be held up for 12 days after deposit, for it sometimes takes that long to get reports on checks that do not clear. Send SEPARATE CHECKS for EACH APPLICATION to avoid return of application. Especially when more than one application is forwarded in the same envelope, it is well to put the old registration number or applicant's name on check or draft so as to be sure that it will be connected with the right application.

Write in This Space. For Office Use Only

Mor

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? (Date) _____ Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? (Date) _____ 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? (Date) _____

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased Johnson Store Mtr Co

Williston — ND

City — State

23. Date purchased 1/25, 195 2

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA }
County of Pennington } ss.

J. N. Lyle being duly sworn says: That he is authorized to sign as agent for Johnson Store Mtr Co, licensed as dealer for 1952 (Year) under No. 2033;

that said licensed dealer on 2/5/52 (Date) sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from Chevrolet Co (Whom) Detroit Michigan (Address)

2/5/52 (When) by Clark Transport Co. (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used.);

that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is clearly noted in this application for registration.

Signature J. N. Lyle

Subscribed and sworn to before me this 25 day of Jan, 195 2

V. J. Winkler

Notary Public Pennington County, Minn. My commission expires _____

SEAL

Form AA

DO NOT SEND PERSONAL CHECK

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

Here Attach Draft, Cashier's Check or Money Order.

Attach Registration Certificate Here. If not attached, explain why.

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

Answer all questions on this side pertinent to the registration of your vehicle and, if the vehicle is a new one, a used one from another state or a home made one not previously registered, answer the questions pertinent thereto on the reverse side hereof.

TE OF MINNESOTA } ss.
nty of _____

To the Registrar of Motor Vehicles
St. Paul, Minnesota
Date _____ 195_____

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is hereby listed for registration and taxation under the laws of the State of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

CHECK CLASS IN WHICH YOU WISH TO REGISTER

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE" CLASS:** _____
"Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
Tax: Find it by weight, table below (Item 6).

2. **"HOUSE TRAILER" CLASS:** "HZ"_____
"House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
Tax: Find it by weight, table below (Item 6).

3. **"PASSENGER CAR UTILITY TRAILER" CLASS:** "$Z"_____
Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
Have you read the law above and do you certify that your trailer meets all the conditions prescribed therein?_____ (Must be answered).
Tax: $2 per biennium, $1 for last year thereof (1953).

4. **"MOTORCYCLE" CLASS:** "MC"_____
Does it have a side car or three wheels?_____
Tax: Without side car $3, with side car or 3 wheels, $5.

5. **"MOTOR SCOOTER", "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR" CLASS:** "MBS"_____
Encircle the one you are registering. Tax: $1.

(DO NOT WRITE IN THIS SPACE)

6 PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs Shipping Weight in lbs	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older	Mfgs Shipping Weight in lbs.	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$5.00	3401-3600	$28.00	$21.00	$14.00	$10.00	$ 7.50
801-2000	13.20	15.00	12.50	10.00	7.50	3601-3800	30.80	24.06	16.05	10.00	8.33
2001-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	30.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.85	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.00	38.70	25.80	12.90	12.90
2601-2800	21.80	16.80	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.50	49.35	32.90	16.45	16.45
30	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	16.38	16.38
3	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	16.75	16.75

If plates are not to be sent to owner as in item 15 give name and address below

(Name) _____

Postoffice Address (Street or R F D) _____

(City and State) _____

Do Not Write in This Space

9

REC'D 23

Give 1952 Minnesota

Registration No._____
If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

7. **MAKE**_____
8. **SERIAL NO.** 8
9. **YEAR & MODEL**_____
10. **TYPE**_____
11. **Check kind of transmission:**
Standard ☐ **Standard with overdrive** ☐ **Other** ☐
"Other" includes Automatic, Dynaflow, Ford-o-matic, Gyromatic, Hydra-matic, Merc-o-matic, Powerglide, Prestomatic, Tip-toe Hydraulic, and Ultramatic.
12. **No. of Cyl.**_____ **Pass. Cap.**_____

Weight_____ lbs.
If passenger automobile, ambulance, hearse, house trailer, or station wagon, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.)

_____

Arrears { **Tax**_____ / **Fees**_____

1953 Tax_____

1953 Fees_____

Total_____

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. X _____
(Owner must sign on above line opposite X)

_____
(Print or type name here)

14. _____
(County of residence)

15. _____
Postoffice Address (Street or R.F.D.)

_____
(City) (P.O. Zone) (State)

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this _____ **day of** _____, 195_____

SEAL

_____
Notary Public_____ **County, Minn.**

My commission expires_____

4 ✓ **NOVEMBER 16 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.** E A

[fol. 401]

Plaintiff's Exhibit AA

United States of America

36828

STATE OF MINNESOTA

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated February 22, 1952 in the name of Northwestern States Portland Cement Company, 516 Third Street S. W., Faribault, Minnesota, covering a 1952 Chevrolet Deluxe Styleline 2door with serial number 21KKB11922, 1952 registration number 876358.

Dealer's Report of Sale on reverse side of application covering same vehicle, executed to show sale from Lockwood Auto Company, Faribault, Minnesota to Northwestern States Portland Cement Company under date of February 22, 1952.

Application for Registration dated November 13, 1952 in the name of Northwestern States Portland Cement Company, covering same vehicle, 1953 registration number 179031.

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this

29th *day of* October,

A. D. 19 54.

Secretary of State

401

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Here Attach Draft, Cashier's Check or Money Order.

$ 76 00

Do Not Write in This Space

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA
County of Rice } ss. **Date** 2-22-52 , 195__

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1951 Minnesota Registration No. Rur

If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE" AMBULANCE, HEARSE": CLASS** *
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. **"HOUSE TRAILER":** CLASS "HZ" ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00	3401-3600	$28.00	$21.00	$14.00	$10.00	$ 7.50
801-2000	15.20	15.00	12.50	10.00	7.50	3601-3800	33.30	24.98	16.65	10.00	8.33
2001-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.60	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75

3. **"PASSENGER CAR UTILITY TRAILER":** CLASS "SZ" ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium; $1 for last year thereof (1953).
4. **"MOTORCYCLE":** CLASS "MC" ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. **"MOTOR SCOOTER," "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR":** CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.
6. **"SNOWMOBILE":** CLASS "S" ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

Attach Registration Certificate Here. If not attached, explain why.

Rur

7. **MAKE** Chevrolet
8. **SERIAL NO.** 21KKB11922
9. **YEAR & MODEL** 1952
10. **TYPE** Dlx. Style 2 dr.
11. **Check kind of transmission:** Standard ☐ Other ☒
12. **No. of Cyl.** 6 **Pass. Cap.** 5

Weight 3240 **lbs.**

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "SZ" trailer give gross weight of load and vehicle.

ARREARS Tax _____ Fees _____

1952 Tax 24.20

1952 Fees _____

Total 24.20

Please do not send personal checks

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. **OWNER** X Northwestern States Portland Cement Company
    Owner must sign here (Print or type name here)
14. **I RESIDE IN THE COUNTY OF** Rice
15. **I GET MY MAIL AT** 516 3rd St. W. Faribault Minn.
    Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this ____ day of February, 195 2

Notary Public Rice County, Minn. My commission expires 12-12-57

RUTH MORRIS

If plates are not to be sent to owner as above give name and address here _____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1

[fol. 403]

Please do not send personal check

DO NOT SEND CURRENCY. If you do, it will be at your own risk. Remit by certified check, American Express or U. S. Postal money order, or bank draft. To avoid delay, do not send personal checks. Applications with which personal checks are submitted will be held up for 12 days after deposit, for it sometimes takes that long to get reports on checks that do not clear. Send SEPARATE CHECKS for EACH APPLICATION to avoid return of application. Especially when more than one application is forwarded in the same envelope, it is well to put the old registration number or applicant's name on check or draft so as to be sure that it will be connected with the right application.

Do Not Write in This Space. For Office Use Only

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? _____ Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? _____ 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? _____

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased Lockwood Auto Co.

Faribault, Minn. 23. Date purchased 2-22-52, 195__
City State

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA
County of Rice } ss.

C. A. Lockwood being duly sworn says: That he is authorized to sign as agent for Lockwood Auto Co., licensed as dealer for 1952 (Year) under No. 615;

that said licensed dealer on 2-22-52 (Date), sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from Chevrolet Motor Division (Whom) Janesville, Wis. (Address)

2-18-52 (When) by Milwaukee R.R. (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used.);

that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is clearly noted in this application for registration.

Signature C. A. Lockwood

Subscribed and sworn to before me this 22 day of February, 1952

Ruth Thomas

Notary Public Rice County, Minn. My commission expires 12-12-57

RUTH MORRIS THOMAS
Notary Public, Rice County, Minnesota
My Commission Expires Dec. 12, 1957

SEAL

384

[fol. 404]

Form AA

DO NOT SEND PERSONAL CHECK

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

Here Attach Draft, Cashier's or Money Order

Attach Registration Certificate Here. If not attached, explain why.

Do Not Write in This Space

179-C31

NOV 13 1952

D645

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

Answer all questions on this side pertinent to the registration of your vehicle and, if the vehicle is a new one, a used one from another state or a home made one not previously registered, answer the questions pertinent thereto on the reverse side hereof.

STATE OF MINNESOTA
ss.
County of Ramsey

To the Registrar of Motor Vehicles
St. Paul, Minnesota
Date _____ 195_

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is hereby listed for registration and taxation under the laws of the State of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

CHECK CLASS IN WHICH YOU WISH TO REGISTER

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. "PASSENGER AUTOMOBILE" CLASS: C
"Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
Tax: Find it by weight, table below (Item 6).

2. "HOUSE TRAILER" CLASS: "HZ"_____
"House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
Tax: Find it by weight, table below (Item 6).

3. "PASSENGER CAR UTILITY TRAILER" CLASS: "$Z"_____
Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
Have you read the law above and do you certify that your trailer meets all the conditions prescribed therein?_____ (Must be answered).
Tax: $2 per biennium, $1 for last year thereof (1953).

4. "MOTORCYCLE" CLASS: "MC"_____
Does it have a side car or three wheels?_____
Tax: Without side car $3, with side car or 3 wheels, $5.

5. "MOTOR SCOOTER", "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR" CLASS: "MBS"_____
Encircle the one you are registering. Tax: $1.

(DO NOT WRITE IN THIS SPACE)

6. PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1953 1952 1951	1950 1949 1948	1947 1946 1945	1944 to 1935	1934 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$5.00	3401-3600	$28.80	$21.60	$14.40	$10.80	$ 7.50
801-2000	15.20	15.00	12.50	10.00	7.50	3601-3800	30.00	24.00	16.65	10.00	8.33
2001-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	30.00	25.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.85	22.55	11.25	11.25
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.00	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	45.00	29.25	14.65	14.65
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.00	49.35	32.90	16.45	16.45
3001-3200	24.80	18.00	12.50	10.00	7.50	4801-5000	75.00	56.15	36.75	18.35	18.35
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75

If plates are not to be sent to owner as in item 15 give name and address below

(Name) _____

Postoffice Address (Street or R.F.D.) _____

(City and State) _____

Give 1952 Minnesota Registration No. 876358

If not previously registered in Minnesota answer items pertinent to your registration on reverse side hereof.

7. MAKE Olds
8. SERIAL NO. 21KKB11922
9. YEAR & MODEL 1952 Super 88
10. TYPE _____
11. Check kind of transmission:
Standard ☐ Standard with overdrive ☐ Other ☐
"Other" includes Automatic, Dynaflow, Ford-o-matic, Gyromatic, Hydra-matic, Merc-o-matic, Powerglide, Prestomatic, Tip-toe Hydraulic, and Ultramatic.
12. No. of Cyl. _____ Pass. Cap. _____

Weight 3240 lbs.

If passenger automobile, ambulance, hearse, house trailer, or station wagon, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.)

Arrears { Tax _____ Fees _____
1953 Tax 16.40
1953 Fees _____
Total _____

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. X _____
(Owner must sign on above line opposite X)

Northwestern Stat[illegible] Portland Cement Co
(Print or type name here)

14. _____ Rice
(County of Residence)

15. 516 3rd St SW
Postoffice Address (Street or R.F.D.)

Owatonna Minn
(City) (P.O. Zone) (State)

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this _____ day of _____, 195_

SEAL

Notary Public _____ County, Minn.

My commission expires _____

1-10

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fols. 405, 405a]

PLAINTIFF'S EXHIBIT BB

United States of America.

STATE OF MINNESOTA

36825

DEPARTMENT OF STATE

I, MRS. MIKE HOLM, Secretary of State of the State of Minnesota, do hereby certify that the annexed is a full, true and correct photocopy of Application for Registration dated November 1, 1948 in the name of Northwestern States Portland Cement Company, 516 S. W. Third Street, Faribault, Minnesota, covering a 1946 Fleetmaster Sport Sedan with serial number 21DKJ13841, motor number DAA366929, 1949 registration number 176160.

Application for Registration dated November 2, 1949 in the name of Northwestern States Portland Cement Company, 516 S. W. Third Street, Faribault, Minnesota, covering same vehicle, 1950 registration number 176528.

Application for Registration dated November 8, 1950 in the name of Northwestern States Portland Cement Company, 516 - 3rd Street S. W., Faribault, Minnesota, covering same vehicle, 1951 registration number 177710.

Application for Registration dated November 3, 1951 in the name of Northwestern States Portland Cement Company, 516 - 3rd Street S. W., Faribault, Minnesota, covering same vehicle, 1952 registration number 176886.

as the same appears of record in this office, and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol in St. Paul, this 29th *day of* October,

A. D. 19 54.

Secretary of State

405

Posting of transfers on reverse side of application covering same vehicle showing continuity of ownership to Lockwood Auto Company, 515 Central Avenue, Faribault, Minnesota; and to Earnest P. Reichert, Route # 5, Faribault, Minnesota, under date of March 13, 1952.

405a

386

[fol. 406]

FORM 1H

APPLICATION FOR MOTOR VEHICLE REGISTRATION
USE THIS SIDE ONLY TO RE-REGISTER A VEHICLE REGISTERED IN MINNESOTA LAST YEAR

For new vehicle or one registered elsewhere use other side.

AUTOMOBILE—~~HEARSE—SCHOOL BUS~~ (Cross out two)

To MIKE HOLM, Secretary of State

St. Paul, Minnesota

Date Nov. 14 1948

Do not write in this space. 41

76-160

RECD

Here Attach Cashier's Check or Money Order.

Attach Registration Certificate Here.

If not attached, explain why.

Do not Write in This Space. For Office Use Only.

Give 1948 Minnesota Registration No.

No. 176-241

Make Chev.

Motor Da93669294

Serial 2102KJ.13841

Year & Model 1946 FLM.

Type Sft. Sedan

SHIPPING WEIGHT
(As shown on registration card)

3200 lbs.

If shipping weight is not available attach official weight ticket.

Manufacturer's Shipping Weight	TAX IN ALL MAKES							
	All 1949 Models	All 1948 Models	All 1947 Models	All 1946 Models	All 1945 Models	All 1944 Models	All 1943 Models	All Older Models
Under 2,000 lbs.	$11.00	$ 9.00	$ 8.25	$ 6.60	$ 5.00	$ 5.00	$ 5.00	$ 5.00
2,000-2,200 lbs., Inc.	17.00	15.30	12.75	10.20	7.65	7.50	7.50	7.50
2,201-2,400 " "	18.00	16.20	13.50	10.80	8.10	7.50	7.50	7.50
2,401-2,600 " "	19.00	17.10	14.25	11.40	8.55	7.50	7.50	7.50
2,601-2,800 " "	20.00	18.00	15.00	12.00	9.00	7.50	7.50	7.50
2,801-3,000 " "	21.00	18.90	15.75	12.60	9.45	7.50	7.50	7.50
3,001-3,200 " "	22.25	20.02	16.69	13.35	10.01	7.50	7.50	7.50
3,201-3,400 " "	25.50	22.95	19.13	15.30	11.48	7.65	7.50	7.50
3,401-3,600 " "	27.25	24.53	20.44	16.35	12.26	8.18	7.50	7.50
3,601-3,800 " "	30.75	27.68	23.06	18.45	13.84	9.23	7.50	7.50
3,801-4,000 " "	34.75	31.28	26.06	20.85	15.64	10.43	7.50	7.50
4,001-4,200 " "	45.00	40.50	33.75	27.00	20.25	13.50	7.50	7.50
4,201-4,400 " "	54.00	48.60	40.50	32.40	24.30	16.20	8.10	7.50
4,401-4,600 " "	57.00	51.30	42.75	34.20	25.65	17.10	8.55	7.50
4,601-4,800 " "	65.00	58.50	48.75	39.00	29.25	19.50	9.75	7.50
4,801 and over	75.00	67.50	56.25	45.00	33.75	22.50	11.25	7.50

If VEHICLE IS A BUS is it operated ONLY as a School Bus _____?

(If not, this blank will not serve. Use Bus Form 5A)

ARREARS { Tax _____ Fees _____

1949 Tax 13.35

1949 Fees _____

Total 13.35

I, the undersigned, hereby apply for registration and affirm that I am the owner of the above described vehicle, and also that I have described it correctly.

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

OWNER X Northwestern States Portland Cement Co. By Office Manager (Corporation) Northwestern States Portland Cement Co. (Print or type name here)

(Owner must sign here)

I RESIDE IN THE COUNTY OF Faribault, Minnesota

I GET MY MAIL AT 516- 3rd St. W.

Postoffice Address (Street or R F D) City P. O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

If plates are not to be sent to owner as above give name and address here _____

Postoffice Address (Street or R F D) City P. O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

Please do not write on this check and personal checks

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

426

[fol. 407]

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

IMPORTANT: Before filling out application, read other side.

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 21 and 22 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-19 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 20 on reverse side in addition.

176-528
REC'D 10

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

Here Attach Draft—Cashier's Check or Money Order.

Do Not Write in This Space. For Office Use Only.

STATE OF MINNESOTA
County of Rice } ss. **Date** 11/2/ **19**49

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1949 Minnesota Registration No.
No. 176160.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

Have you read the law on the reverse side hereof in regard to that class? ____

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE":** CLASS ____
   Encircle the one you are registering.
   Tax: Find it by weight, table below.
2. **"HOUSE TRAILER":** CLASS "HZ" ____
   Tax: Find it by weight, see table below.
3. **"PASSENGER CAR UTILITY TRAILER":** CLASS "$Z" ____
   Tax: $2 per biennium, $1 for last year thereof.
   (This is new. See law on other side.)
4. **"SNOWMOBILE":** CLASS "S" ____
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.
5. **"MOTORCYCLE":** CLASS "MC" ____
   Does it have a side car or three wheels? ____
   Tax: Without side car $3, with side car or 3 wheels $5.
6. **"MOTORIZED BICYCLE" OR "MOTOR SCOOTER":** CLASS "MBS" ____
   Encircle the one you are registering, Tax: $1.

Attach Registration Certificate Here If not attached, explain why.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1950 1949 1948	1947 1946 1945	1944 1943 1942	1941 to 1932	1931 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1950 1949 1948	1947 1946 1945	1944 1943 1942	1941 to 1932	1931 and older
Under 2000	$15.20	$15.00	$12.50	$10.00	$ 7.50	3601-3800	$23.50	$24.38	$16.88	$10.00	$ 8.25
2000-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.00	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.30	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75
3401-3600	28.00	21.00	14.00	10.00	7.50						

7. **MAKE** Chev.
8. **SERIAL NO.** 21DKJ 13841
9. **MOTOR NO.** DAA366929
10. **YEAR & MODEL** 1946 Fleet
11. **TYPE** Spl Sed
12. **No. of Cyl.** ____ **Pass. Cap.** ____

Weight 3200 **lbs.**
If passenger automobile, ambulance, hearse, house trailer or snowmobile, give manufacturers shipping weight. (If shipping weight is not available, attach official weight ticket.) For a trailer other than a house trailer, give maximum load carried at any one time.

ARREARS Tax ____ Fees ____
1950 Tax 18.60
1950 Fees ____
Total ____

Please do send personal check
(SEE INST. ONS ON REVERSE SIDE HEREOF)

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. **OWNER** X Nat'l Gypsum-Golden State-Portland Cement Co (NORTHWESTERN States PORTLAND CEMENT Co)
Owner must sign here (Print or type name here)

14. **I RESIDE IN THE COUNTY OF** Rice

15. **I GET MY MAIL AT** Faribault, Minn.
Postoffice Address (Street or R.F.D.) City P. O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this ____ **day of** ____ **19**____

Notary Public ____, **County, Minn. My commission expires** ____

If plates are not to be sent to owner as above give name and address here ____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

388

[fol. 408]

Form AA

Here Attach Draft, Cashier's Check or Money Order.

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Do Not Write in This Space

171-

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA
County of Rice } ss. Date 11/8, 195[illegible]

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

Give 1950 Minnesota Registration No.
176-528
If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. **"PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS** ✓
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.

2. **"HOUSE TRAILER": CLASS "HZ"** ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1951 1950 1949	1948 1947 1946	1945 1944 1943	1942 to 1933	1932 and older
Under 2000	$15.50	$15.00	$12.50	$10.00	$ 7.50	3501-3800	$33.30	$24.98	$16.65	$10.00	$ 5.31
2000-2200	16.00	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.00	38.70	25.50	12.90	12.90
2601-2800	21.00	16.30	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75
3401-3600	28.00	21.00	14.00	10.00	7.50						

3. **"PASSENGER CAR UTILITY TRAILER": CLASS "$Z"** ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1951).

4. **"MOTORCYCLE": CLASS "MC"** ____
   Does it have a side car or three wheels? _____
   Tax: Without side car $3, with side car or 3 wheels $5.

5. **"MOTORIZED BICYCLE" OR "MOTOR SCOOTER": CLASS "MBS"** ____
   Encircle the one you are registering. Tax: $1.

6. **"SNOWMOBILE": CLASS "S"** ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

7. MAKE Chev.
8. SERIAL NO. 2HKG-13841
9. YEAR & MODEL 46-
10. TYPE Hwy Pat Sed.
11. Check kind of transmission:
    Standard ☐ Other ☐
12. No. of Cyl. _____ Pass. Cap. _____

Weight 3200 lbs.

If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "$Z" trailer give gross weight of load and vehicle.

ARREARS { Tax _____ Fees _____
1951 Tax 8.60
1951 Fees _____
Total _____

Attach Registration Certificate Here. If not attached, explain why.

Please do not ✓ personal check
(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

I understand that any plate issued to me hereon may be seized at any time, if I do not [illegible] promptly or register for proper class or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X Northwestern States Portland Cement Co (Print or type name here)
    Owner must sign here
    Northwestern States Portland Cement Co

14. I RESIDE IN THE COUNTY OF Rice

15. I GET MY MAIL AT 516 3rd St W Faribault Minn
    Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this _____ day of _____, 195__

Notary Public _____ County, Minn. My commission expires _____

If plates are not to be sent to owner as above give name and address here _____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1.

[fol. 409]

Form AA

APPLICATION FOR MOTOR VEHICLE REGISTRATION

For a class not listed hereon use other form where it is listed, form "TK" or "U"

To reregister a vehicle registered in Minnesota last year answer items 7-15. To register a new vehicle answer items 7-15 on this side and 22-24 on reverse side in addition. To register a used vehicle from another state, answer items 7-15 on this side and 16-20 on reverse side in addition. To register a home-made vehicle answer items 7-15 on this side and item 21 on reverse side in addition.

Here Attach Draft, Cashier's Check or Money Order.

176-886

Do not write in this space

To MIKE HOLM, Secretary of State,
St. Paul, Minnesota

STATE OF MINNESOTA }
County of Otter Tail } ss. Date 4/3, 1951

Give 1951 Minnesota Registration No.
177-710
If not previously registered in Minnesota, answer items pertinent to your registration on reverse side hereof.

The subscriber hereto being first duly sworn hereby declares that he is the owner of the motor vehicle described herein which is listed for registration and taxation under the laws of the state of Minnesota and that the statements made herein in regard to said vehicle are in all respects true and correct.

CHECK CLASS IN WHICH YOU WISH TO REGISTER:

I have read the definitions carefully and will use the vehicle only as the law allows in the class selected.

1. "PASSENGER AUTOMOBILE, AMBULANCE, HEARSE": CLASS ____
   "Passenger automobile" means any motor vehicle designed and used for the carrying of not more than eight persons, including station wagons.
   Encircle above the one you are registering. Tax table below.
2. "HOUSE TRAILER": CLASS "HZ" ____
   "House trailer" means any trailer or semi-trailer designed and used for human living quarters, and does not include bunk houses, so-called.
   Tax: Find it by weight, table below.

PASSENGER AUTOMOBILE AND HOUSE TRAILER TAX TABLE

Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older	Mfgs. Shipping Weight in lbs.	ALL MODELS 1952 1951 1950	1949 1948 1947	1946 1945 1944	1943 to 1934	1933 and older
Under 801	$ 5.00	$ 5.00	$ 5.00	$ 5.00	$ 5.00	3401-3600	$28.00	$21.00	$14.00	$10.00	$ 7.50
801-2000	15.20	15.00	12.50	10.00	7.50	3601-3800	33.30	24.98	16.65	10.00	8.33
2001-2200	16.80	15.00	12.50	10.00	7.50	3801-4000	39.00	29.25	19.50	10.00	9.75
2201-2400	18.40	15.00	12.50	10.00	7.50	4001-4200	45.10	33.83	22.55	11.28	11.28
2401-2600	20.00	15.00	12.50	10.00	7.50	4201-4400	51.60	38.70	25.80	12.90	12.90
2601-2800	21.60	16.20	12.50	10.00	7.50	4401-4600	58.50	43.88	29.25	14.63	14.63
2801-3000	23.20	17.40	12.50	10.00	7.50	4601-4800	65.80	49.35	32.90	16.45	16.45
3001-3200	24.80	18.60	12.50	10.00	7.50	4801-5000	73.50	55.13	36.75	18.38	18.38
3201-3400	26.40	19.80	13.20	10.00	7.50	Over 5000	75.00	56.25	37.50	18.75	18.75

7. MAKE Chev
8. SERIAL NO. 2HKJ13841
9. YEAR & MODEL 46
10. TYPE Spt. Sed
11. Check kind of transmission: Standard ☑ Other ☐
12. No. of Cyl. 6 Pass. Cap. 5

Weight 3200 lbs.
If passenger automobile, ambulance, hearse, house trailer, station wagon or snowmobile, give manufacturer's shipping weight. (If shipping weight is not available, attach official weight ticket.) For a "HZ" trailer give gross weight of load and vehicle.

3. "PASSENGER CAR UTILITY TRAILER": CLASS "SZ" ____
   Trailers of not more than two wheels with a gross weight of load and vehicle not exceeding 3000 pounds, not for hire and used only by the owner thereof with passenger automobiles and not employed in the transportation of passengers or property for hire.
   Tax: $2 per biennium, $1 for last year thereof (1953).
4. "MOTORCYCLE": CLASS "MC" ____
   Does it have a side car or three wheels? ____
   Tax: Without side car $3, with side car or 3 wheels $5.
5. "MOTOR SCOOTER," "MOTORIZED BICYCLE" OR "MOTORIZED WHEEL CHAIR": CLASS "MBS" ____
   Encircle the one you are registering. Tax: $1.
6. "SNOWMOBILE": CLASS "S" ____
   Motor vehicles specially equipped for operation over snow and used exclusively for such purpose.
   Tax: $3 if weighing one ton or less, and an additional $2 for each additional ton or fraction thereof.

ARREARS Tax ____ Fees ____
1952 Tax 12.50
1951 Fees ____
TRANSFER

I understand that any plate issued to me hereon may be seized at any time, if I do not respond promptly to request for proof of title or additional payment of tax or fee that may be discovered to be necessary when this application is checked at St. Paul.

13. OWNER X North Western Sash & Door Co. Portland Cement Co.
    Owner must sign here (Print or type name here)
14. I RESIDE IN THE COUNTY OF Cass
15. I GET MY MAIL AT 576 - 3rd St Bal Park Rapids Minnesota
    Postoffice Address (Street or R.F.D.) City P.O. Zone State

CERTIFICATE will be sent to this address; be sure it is clear.

Attach Registration Certificate Here. If not attached, explain why.

Please do not send personal check

(SEE INSTRUCTIONS ON REVERSE SIDE HEREOF)

SEAL

ACKNOWLEDGMENT not necessary if this vehicle was registered in MINNESOTA last year by the present applicant.

Subscribed and sworn to before me this ____ day of ____, 195

Notary Public ____ County, Minn. My commission expires ____

If plates are not to be sent to owner as above give name and address here ____

Postoffice Address (Street or R.F.D.) City P.O. Zone State

NOVEMBER 15 LAST DAY TO REGISTER WITHOUT EXTRA FEE. NEW YEAR PLATES MUST BE ON VEHICLES JANUARY 1

Please do not send personal check

DO NOT SEND CURRENCY. If you do, it will be at your own risk. Remit by certified check, American Express or U. S. Postal money order, or bank draft. To avoid delay, do not send personal checks. Applications with which personal checks are submitted will be held up for 13 days after deposit, for it sometimes takes that long to get reports on checks that do not clear. Send SEPARATE CHECKS for EACH APPLICATION to avoid return of application. Especially when more than one application is forwarded in the same envelope, it is well to put the old registration number or applicant's name on check or draft so as to be sure that it will be connected with the right application.

Do Not Write in This Space. For Office Use Only.

To Register a Used Vehicle from Another State Attach the Title and Registration Certificate and Give the Following Information:

16. State _____ Registration No. _____ Year _____ 17. When was this vehicle first brought to Minnesota? _____ 18. Did you come intending to remain here permanently? _____ If not, when did you decide to remain permanently? _____ (Date) Up to the time you decided to remain here permanently did you consider yourself a resident of the state in which your vehicle is now registered? _____ (Date) 19. Was this vehicle ever registered before in Minnesota? _____ When? _____ Under what No.? _____ If registered previously in Minnesota, was it removed with intent that removal would be permanent? _____ When? _____

20. Are you now employed in Minnesota? _____ If so, have you been, or do you expect to be, on the same job for six months or more? _____ When did you start? _____ (Date)

To Register a Home Made Passenger Car Utility Trailer, Motorcycle, Motor Bicycle, or Motor Scooter, Give the Following Information:

21. Give date completed _____, and date first used on highways _____

To Register a New Vehicle, Give the Following Information:

22. From whom purchased _____

_____ 23. Date purchased _____, 195__
City State

24. If a new vehicle purchased in another state, when was it first brought to Minnesota? _____

DEALER'S REPORT OF SALE

(Required only for a new vehicle)

STATE OF MINNESOTA
County of _____ } ss.

_____ being duly sworn says: That he is authorized to sign as agent for _____, licensed dealer for _____ (Year) under No. _____; that said licensed dealer on _____ (Date), sold the vehicle described in the application for registration on obverse side to the applicant who signed the application as owner; that the vehicle came into the possession of said dealer from

_____ (Whom) _____ (Address)

_____ (When) by _____ (Give name of railroad, licensed drive-a-way contractor or the license number of dealer's plates used)

that since that time it has been held for sale by the said dealer; that it was not used so as to become subject to tax in Minnesota while in the possession of said dealer nor before; that ALL the tax and penalties due under the law is hereby waived in this application for registration.

Signature _____

Subscribed and sworn to before me this _____ day of _____, 195__

SEAL.

_____

Notary Public _____ County, Minn. My commission expires _____